This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

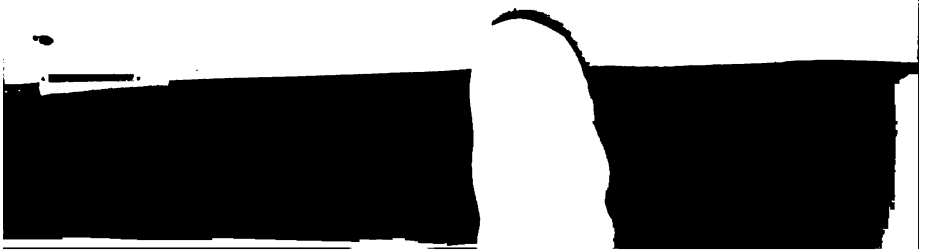
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`



JN
125
.W1
190
cop1

ESSAYS

INTRODUCTORY TO THE STUDY OF

ENGLISH CONSTITUTIONAL HISTORY

ESSAYS

INTRODUCTORY TO THE STUDY OF

ENGLISH CONSTITUTIONAL HISTORY

BY

RESIDENT MEMBERS OF THE UNIVERSITY OF OXFORD

EDITED BY

HENRY OFFLEY WAKEMAN, M.A.
LATE FELLOW OF ALL SOULS COLLEGE, TUTOR OF KEBLE COLLEGE

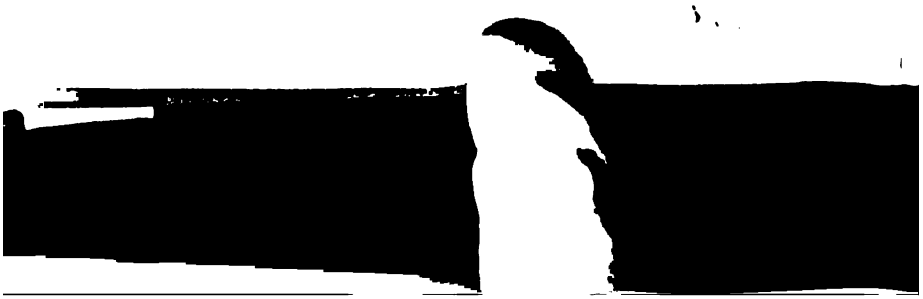
AND

ARTHUR HASSALL, M.A.
STUDENT AND TUTOR OF CHRIST CHURCH

NEW IMPRESSION

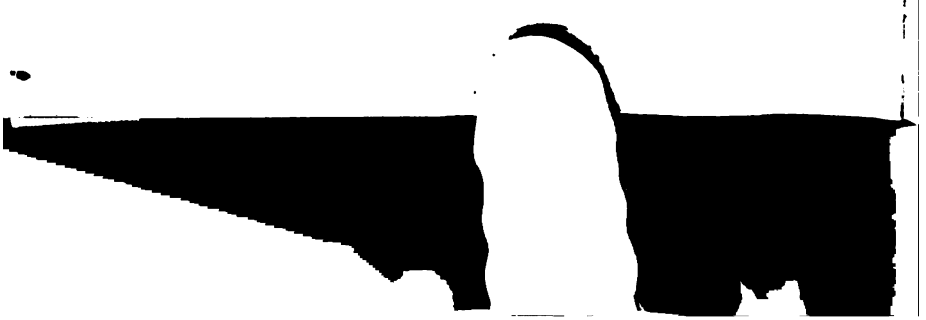
LONGMANS, GREEN, AND CO.
39 PATERNOSTER ROW, LONDON
NEW YORK AND BOMBAY
1901

All rights reserved



volume
esearch,
e many
History.
ving to
with the
as may
nd more
mpts to
of con-
ic of the
n itself,
order is

ion thus
than a
into ex-
harmony,
Some
kground,
fessedly
itutional
the risk
tment in



JN
125
.W15
1901
cop 2

ESSAYS

INTRODUCTORY TO THE STUDY OF

ENGLISH CONSTITUTIONAL HISTORY

ESSAYS

INTRODUCTORY TO THE STUDY OF

ENGLISH CONSTITUTIONAL HISTORY

BY

RESIDENT MEMBERS OF THE UNIVERSITY OF OXFORD

EDITED BY

HENRY OFFLEY WAKEMAN, M.A.
LATE FELLOW OF ALL SOULS COLLEGE, TUTOR OF KEBLE COLLEGE

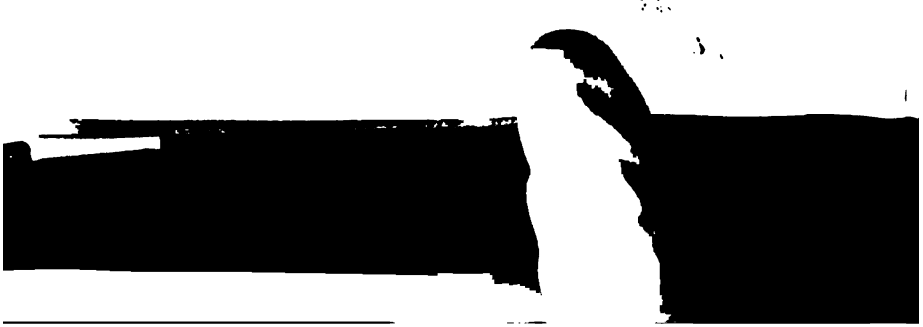
AND

ARTHUR HASSALL, M.A.
STUDENT AND TUTOR OF CHRIST CHURCH

NEW IMPRESSION

LONGMANS, GREEN, AND CO.
39 PATERNOSTER ROW, LONDON
NEW YORK AND BOMBAY
1901

All rights reserved



4-9-03 H.S.J.

PREFACE.

THE writers of the Essays contained in this volume do not pretend that it is the result of original research, or that it will throw any additional light on the many unsolved problems of English Constitutional History. Their object is the much humbler one of trying to arrange the well-ascertained facts connected with the growth of our institutions in such a way as may make the study of them more intelligible, and more attractive to beginners. Each Essay attempts to bring into strong relief the central principle of constitutional development which is characteristic of the period of which it treats; and is complete in itself, although a certain unity and chronological order is preserved throughout.

The picture of the growth of the Constitution thus presented is doubtless rather a photograph than a portrait. The leading features are brought into exceptional prominence at the expense of due harmony, and occasionally, perhaps, of fidelity of effect. Some features are thrown too much into the background, or are altogether obscured. In a work confessedly introductory to a subject so difficult as Constitutional History, it was thought worth while to run the risk of much unevenness and inadequacy of treatment in

UNIV. OF MICH.
CLASS LIBRARY
HISTORY
Accession 161 Copy 2

order to gain, if possible, the compensating advantages of clearness and simplicity. Whether the experiment has succeeded it will be for the reader to judge.

The Constitutional History of Dr. Stubbs has, with his permission, been taken throughout as the foundation of the work; and references to it, therefore, have not been inserted. To the kindness of Dr. Stubbs in looking over the proofs of this volume, and to his ready sympathy and help accorded to them in their undertaking, the authors wish to express their deep obligation. They are sensible how much of what there may be of value in the following pages is due to his suggestion and criticism.

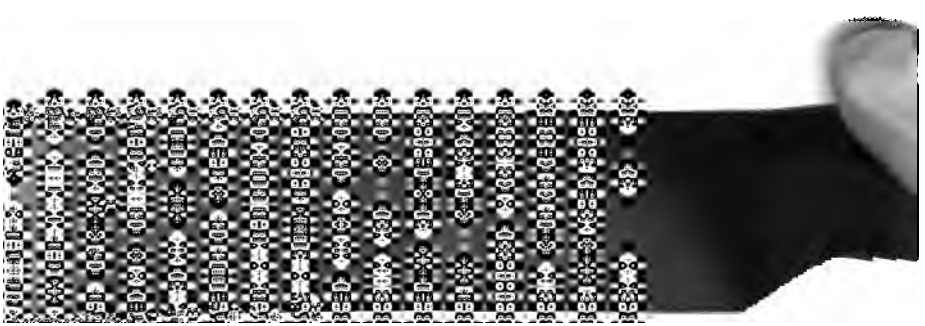
OXFORD, *September*, 1886.

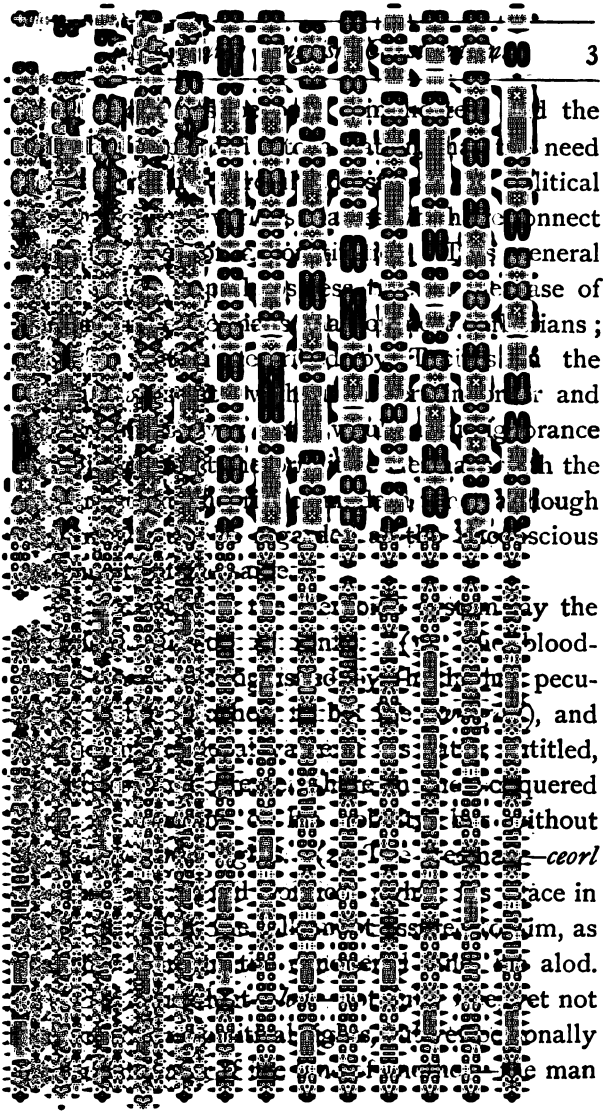
IN preparing a Second Edition for the press, little alteration has been found necessary except in the first Essay, on the subject of which a good deal of light has been thrown by recent research. The wide and accurate knowledge of the Rev. A. H. Johnson, Tutor of Merton University and Trinity Colleges, has been of great assistance in the revision of this part of the work, and requires special recognition and thanks.

OXFORD, *January*, 1891.

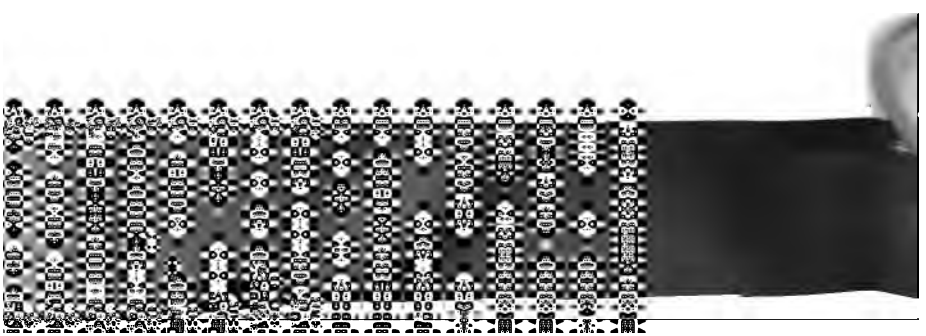
the
need
itical
nnect
neral
ise of
ians;
n the
and
gorance
h the
ough
scious

y the *Ranks.*
blood-
pecu-
), and
titled,
quered
ithout
—*ceorl*
ace in
dm, as
alod.
et not
onally
e man





Ranks.



of a class half-way between freedom and slavery, and recruited from both, destined, perhaps, with various modifications, to become the villein of the Middle Ages. These are the three classes of the nation. Below them is the slave, the chattel —*theow*—with no rights, until the Church succeeds in persuading men of his humanity.

Allotment of land.

The English, thus divided into ranks, migrated into Britain, and there planted themselves, reproducing, we may be sure, the combinations of their former life, as far as was possible under the new conditions of migration and conquest. The allotment of the conquered land, which followed the victory of the tribe, settled the kindred freemen in free village communities to carry on agriculture, at first probably on a system of common cultivation, which, however, in most cases speedily gave way before the principle of individual ownership. On the larger allotments of the kings and eorls the lœts were likewise grouped in dependent communities, similar in organization, but owing rent and services to a lord. And here the system of common cultivation known as the three-field system long survived in the later manor. Under this system the arable land was divided into three common fields: two were sown with crops every year, and one was left fallow. The Britons who survived the cata-

The Township.

strophe which robbed them of their land were probably settled in dependent villages on the estates of the king and nobles, and on the unallotted land which formed the national property.[1]

The Hundred.

The townships were grouped into hundreds, in combinations which possibly reproduced in fact as well as in name the existing divisions of the tribe in its military aspect. More probably, however, the hundred had already lost its original connection with the host.[2] Each of these divisions—township and hundred—possessed its

[1] The question as to the origin of the Anglo-Saxon village or township, and as to the character of the early system of agriculture, is at the present moment a subject of much controversy. Those who wish to pursue the matter further should consult Stubbs, "Constitutional History," vol. i. ch. iii. § 24; ch. v. § 39; Maine, "Village Communities," lect. iii.; G. L. von Maurer, "Geschichte der Markenverfassung;" Fustel de Coulanges, "Recherches sur quelques Problèmes d'Histoire," pp. 145–186, 262, 320–326; Seebohm, "English Village Community," chs. iv. v. viii. ix. x. xi.; Denman Ross, "Early History of Land-owning among the Germans;" Pollock, "Land Laws" (Citizen Series), ch. ii. and Appendix A; Vinogradoff, "Early English Land Tenure," Clarendon Press; Earle, "Land Charters," introduction.

[2] The origin of the hundred, by some attributed to a later date, is a matter of much controversy. The following authorities may be consulted: Stubbs, "Constitutional History," vol. i. ch. ii. §§ 16–18; ch. v. § 45–47; Stubbs, "Select Charters," p. 68; Fustel de Coulanges, "Institutions de l'Ancienne France," vol. ii. p. 195, ff, 224, ff.

own court, presided over by its own elected officers.

The Folk-moot and Witena-gemot.

Above the hundred court stood the Folk-moot, the popular assembly of the tribe, in which every freeman had a voice; while surrounding the king himself stood the assembly of the Wise Men—the *Witenagemot.*

But as the process of consolidation advanced, changes took place in the primitive organization :—

(1) The Folk-moot of the once independent tribe shrank into the shire court of later times with less extensive powers and a more definite sphere of work—mainly judicial.

(2) The Witenagemot of the smaller nation became absorbed in that of the conquering race—circling round the victorious king.

(3) The Folk-moot, or popular assembly of the rapidly growing nation, lost its vitality, meeting only from time to time on some great occasions—such as the coronation of a king—when by its shouts it expressed its approval of that which had already been decided by the more aristocratic assembly of the Witan.

The King.

Kingship may have been created by the

strophe which robbed them of their land were probably settled in dependent villages on the estates of the king and nobles, and on the unallotted land which formed the national property.[1]

The Hundred.

The townships were grouped into hundreds, in combinations which possibly reproduced in fact as well as in name the existing divisions of the tribe in its military aspect. More probably, however, the hundred had already lost its original connection with the host.[2] Each of these divisions—township and hundred—possessed its

[1] The question as to the origin of the Anglo-Saxon village or township, and as to the character of the early system of agriculture, is at the present moment a subject of much controversy. Those who wish to pursue the matter further should consult Stubbs, "Constitutional History," vol. i. ch. iii. § 24; ch. v. § 39; Maine, "Village Communities," lect. iii.; G. L. von Maurer, "Geschichte der Markenverfassung;" Fustel de Coulanges, "Recherches sur quelques Problèmes d'Histoire," pp. 145–186, 262, 320–326; Seebohm, "English Village Community," chs. iv. v. viii. ix. x. xi.; Denman Ross, "Early History of Land-owning among the Germans;" Pollock, "Land Laws" (Citizen Series), ch. ii. and Appendix A; Vinogradoff, "Early English Land Tenure," Clarendon Press; Earle, "Land Charters," introduction.

[2] The origin of the hundred, by some attributed to a later date, is a matter of much controversy. The following authorities may be consulted: Stubbs, "Constitutional History," vol. i. ch. ii. §§ 16–18; ch. v. § 45–47; Stubbs, "Select Charters," p. 68; Fustel de Coulanges, "Institutions de l'Ancienne France," vol. ii. p. 195, ff, 224, ff.

own court, presided over by its own elected officers.

The Folk-moot and Witena-gemot.

Above the hundred court stood the Folk-moot, the popular assembly of the tribe, in which every freeman had a voice; while surrounding the king himself stood the assembly of the Wise Men—the *Witenagemot.*

But as the process of consolidation advanced, changes took place in the primitive organization :—

(1) The Folk-moot of the once independent tribe shrank into the shire court of later times with less extensive powers and a more definite sphere of work—mainly judicial.

(2) The Witenagemot of the smaller nation became absorbed in that of the conquering race—circling round the victorious king.

(3) The Folk-moot, or popular assembly of the rapidly growing nation, lost its vitality, meeting only from time to time on some great occasions—such as the coronation of a king—when by its shouts it expressed its approval of that which had already been decided by the more aristocratic assembly of the Witan.

The King.

Kingship may have been created by the

Conquest; it may have been a more primitive possession of the race. The statement of Tacitus, that some German tribes had no kings, seems to be definitely attached to those tribes which conquered Britain, by the description which Beda[1] gives of the old Saxons, and by the curious return to the earlier form of government in Wessex, which is recorded to have followed the death of Cenwalh.[2] But the antiquity of the institution is of little importance. It is certain that as soon as they appear in the light of history the tribes which planted themselves in Britain without exception were ruled by kings.

The king of the earliest English history is bound to his people by personal ties. As his name implies, he is the head of the race, the kin; he represents, symbolizes, embodies in a concrete form the unity of the race. He is both the *rex* and the *dux* of Tacitus, because perhaps he is always, as Hengest, first *dux* (heretoga) and then *rex* (cyning).[3] Descent from Woden is claimed by every English king, but it is not his sacred character so much as his function of leader in war that forms the basis of his subse-

[1] "Hist. Eccl.," v. 10, p. 309, ed. Moberly.

[2] Ibid., lib. iv. c. 12.

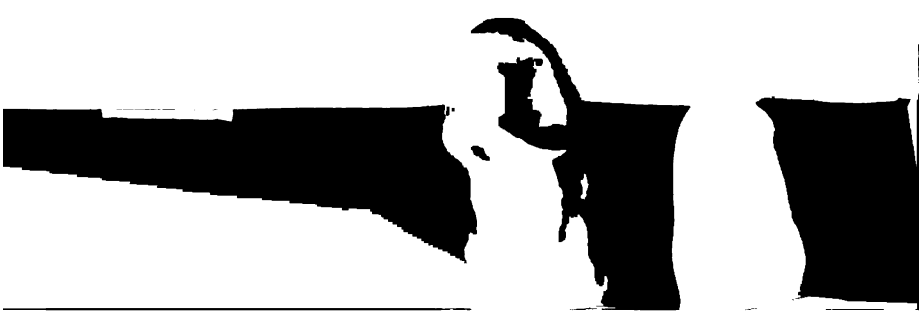
[3] See Anglo-Saxon Chron., sub anno 448 and 455 (Rolls Edition, vol. i. p. 21).

quent power. The early years of the life in Britain were necessarily years of unceasing war. The hereditary general exercised habitually his extraordinary powers. His special privilege, the possession of a *comitatus*, now was most valuable. War multiplied the *comites* (gesiths); war utilized them; war gave their lord the power to reward them. As conquest extended the borders of his kingdom, the king's power increased. He emancipated himself from close contact with his subjects and lived remote. Surrounded with his court of sworn dependents, guarded by their swords, more and more separated from the daily life of his people, beheld by them from an ever-growing distance, his figure dilated before their eyes, he became more terrible and more sacred.

Two events in particular involved a great development of the kingly power—the conversion of the English, and the consolidation of the kingdoms.

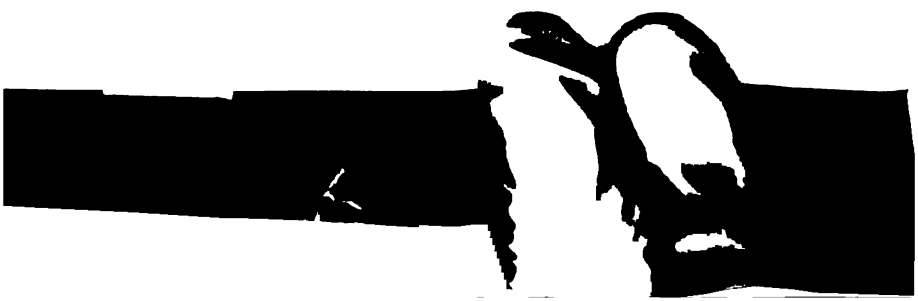
Influence of the Church.

That Christianity elevated the royal power was the result, not of the Church's self-abasement, but of her lofty conception of duty. The great service she bestowed on the kingship was the sense of responsibility. She destroyed the divine descent and substituted the divine mission. The prestige of a sacred origin was supplanted



of the conquest, and the consequent expansion of these little states over the country, soon brought them into contact with one another; and that contact seems to have been invariably of a violent nature. The slaves exported from the island to the Roman market were no doubt captives taken in these inter-tribal wars. The tendency towards consolidation began to work. The tribal kingdoms were grouped into seven or eight larger kingdoms, forming what we call the Heptarchy. One kingdom generally acquired a shadowy supremacy over the others. Kent, East Anglia, Northumbria, Mercia, Wessex, in turn exercised some vague supremacy over the other kingdoms. In the hands of the West-Saxon kings this vague supremacy was changed into a permanent dominion.

This process of consolidation no doubt had its origin in the ambition of individual kings. The union of the Heptarchic Churches in the obedience of the Archbishop of Canterbury led the way to the union of the Heptarchic kingdoms in the obedience of the King of Wessex. For long it was doubtful which kingdom would obtain that supremacy. The last to attempt the task was the kingdom of Wessex; and the supremacy of Wessex alone became permanent. The rival kingdoms



had had their day, and were on the decline. Yet they were still powerful, independent, and irreconcilably jealous of one another. Something more than the efforts of Egbert were necessary before, in any true sense, a kingdom of the English could be said to exist. Such a result could be brought about by nothing less than the destruction of the kingdoms, and the extinction of the local dynasties. The rough hand of heathen conquest swept away every English kingdom but one, and that one was Wessex. Then remained the doubtful duel between the Dane and the West-Saxon. The ability of the house of Cerdic gave the victory to the latter. The treaty of Wedmore (A.D. 879) may be regarded as both the record of the unification of the English, and the epitaph of the independence of the sub-kingdoms.

The king's power becomes territorial.

The northern invaders ministered to the increase of the royal power in two ways. First, as we have seen, by destroying possible rivals, and giving the West-Saxon king the position of the sole representative of the English race; in a word, by rendering possible the union of the English under a single rule. But they did more than this; they brought about a change in the character as well as in the position of the king, and in the extent of his realm. We have said

relation to his gesiths. They rise in power absolutely, but relatively to their lord they sink into a lower condition. No longer companions (*gesiths*), they become soldiers (*thegns*). This land-holding, service-owing thegnhood constitutes a powerful territorial aristocracy, which gradually absorbs the older nobility of blood, and develops into something almost identical with the feudal baronage of later times.

Commendation.

The personal relation originally existing between the king and his people had been further undermined by the practice of *commendation*, a practice which, in the stormy period of war, was very common. By commendation a freeman placed himself under the protection of some powerful person, whom he acknowledged as his lord, and from whom he received protection. The freemen were constantly on the decrease. In a time of perpetual commotion they had a strong inducement to surrender up their alods into the hands of an over-lord, often the king, and receive them back, laden, indeed, with conditions of suit and service, but guarded by his powerful protection.

Thus, perhaps, we can understand how easy was the transition from the personal to the territorial conception of kingship, how rapidly the newer relation absorbed the older when

once the commendation of the conquered Danes had placed the two relations in opposition. The legislation of the sons of Alfred marks the transition. It is complete when Edmund (A.D. 943) exacts the oath of fealty from all his subjects. The English king does not cease to be the head of the race, but that is not his most prominent function. The relation between him and his people is identical with that between a man and his lord, in a word, it is a feudal relation. All are to be faithful to Edmund, "*Sicut homo debet esse fidelis domino suo.*"

Development of the royal power.

The changed position of the king is to be traced in different directions: in legislation, in the maintenance of the peace, in the treatment of the folk-land, the constitution of the Witan, the assumption of imperial titles.

(1) *Treason*

Alfred's legislation contains the first law of treason;[1] the law which separates "treason against a lord" as the crime for which alone no money *bot* could be taken. "*If any one plot against the king's life, of himself, or by harbouring of exiles, or of his men; let him be liable in his life and all that he has.*"[2] Edmund, as we have seen, asserts that the

[1] "Select Charters," 4th edit., p. 62.

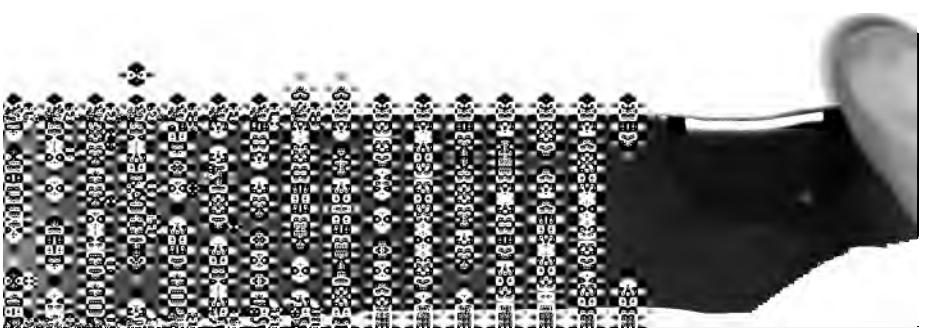
[2] Ibid., p. 67.

king is the lord of his people; and a law of Ethelred[1] seems to make absence from the *fyrd*, or national levy, when the king in person convenes it, a treasonable offence; the *wite* of one hundred and twenty shillings suffices for ordinary neglect of the *fyrd*. There can be little doubt that the offence of treason assumed a special importance in time of war; and the fact that the Danes were heathens invests the English wars against them with a semi-sacred character. Treason, perhaps, involved apostasy, for it was an offence against the champion of the faith.

(2) *The king's peace.*

Originally the peace, the unwritten covenant on which society bases itself, was maintained by the folk itself; the hundred and the shire had their own "peace." But from the first there had existed, side by side with this general peace of the folk, a limited and special peace, the *grith* or *mund* of the king. As the *frith* of the folk was maintained by the national officers, so the *grith* of the king was maintained by the royal officers. The king's peace extended over the four Roman roads, over rivers and navigable streams, which are the highways of commerce. Three times a year, at the great festivals of Christmas, Easter, and Whitsuntide,

[1] "Select Charters," p. 73.



officers become his officers. "*If any one fail to attend the gemot thrice, let him pay the king's oferhyrnes . . . if any one will not ride with his fellows* (to arrest the wrong-doer), *let him pay the king's oferhyrnes.*"[1] To neglect the court or disobey the officers is to insult the king, and must be atoned for by a "fine for contempt."

(3) *Treatment of the folk-land.* And as the peace, and the courts of justice, and the administrative officials cease to be the folk's and become the king's, so does the folk-land gradually become changed into the king's demesne. The folk-land was what we have described as the unallotted land which remained over after the settlement of all claims. It was the property of the nation, and therefore the management of it remained in the hands of the nation. The early grants of folk-land invariably express the consent of the Witenagemot. The king grants "*cum consilio, consensu et licentia procerum.*"[2] But from the time of Alfred this clause is of rarer occurrence. The consent of the Witan becomes their attestation. No longer as grantors but as witnesses they attach their names to the charters; but they do not lose their right altogether until the eleventh century. The reign of Ethelred II., perhaps, marks the change.

[1] "Select Charters," p. 66.

[2] *Vide* Kemble's "Saxons in England," vol. ii. p. 226.

The king exercised an ever-growing influence over the composition of the *Witenagemot.* The free elements—the aldermen and bishops—were outnumbered by the ethelings and king's thegns. And, perhaps, this easy manipulation of the central assembly was the reason why it succeeded in preserving so considerable a proportion of its ancient powers. The king could effect his purposes with less risk of unpopularity if he effected them through its agency. There could be no object in destroying so useful an instrument. (4) *The Witenagemot.*

Two rights the Witenagemot succeeded in retaining throughout the whole of its existence—the right of legislation, and that of electing and deposing the king.

The laws of Ethelbert form the earliest existing fragments of English legislation, and they were issued, so Beda informs us, *cum consilio sapientium.*[1] The earliest extant West-Saxon laws, the laws of Ini, are issued by that king "*with the advice and by the teaching of Cenred my father, and of Hedde my bishop, and Ercenwold my bishop, with all my ealdormen, and the most eminent witan of my people, and also with a great assemblage of God's servants.*"[2] Alfred, whose reign in many respects marks a (a) *Legislation.*

[1] Beda, bk. ii. ch. 5. [2] "Select Charters," p. 61.

great advance of the royal power, acknowledges in ample terms the action of the Witan in his legislation. "*I then, Alfred, King of the West-saxons, showed these* [laws] *to all my witan, and they then said, that it liked them well so to hold them.*"[1] Athelstan, perhaps, was the most powerful sovereign of the house of Cerdic, yet his reign contains an emphatic assertion of the legislative right of the Witan. "*These are the dooms which the witan at Exeter decreed, with the counsel of Athelstan the king.*"[2] In Edgar's reign the theory of the kingship reached its highest level, although the zenith of real power would seem to have passed; yet the "peaceful king," like his predecessors, legislates "*with the counsel of his witan.*"[3] Ethelred II., a prince not without a strong inclination towards absolutism, if without capacity for government, freely acknowledges the right of the Witenagemot to make laws. "*Wise,*" he says, "*were those secular Witan who to the divine laws of justice added secular laws for the government of the people; and decreed bot to Christ and the king, that many should thus, of necessity, be compelled to right.*"[4] The conquering and imperial Canute

[1] "Select Charters," p. 62.
[2] Kemble's "Saxons in England," vol. ii. p. 210.
[3] "Select Charters," p. 71.
[4] Kemble's "Saxons in England," vol. ii. p. 212.

retains at the head of his collection of laws the customary formula; and the witness of his reign completes the chain of evidence on this subject.

(β) *Election and deposition of the king.*

The English kingship was both hereditary and elective; that is to say, it was elective within the limits of a single family; failing that family it was elective absolutely. No right of primogeniture was recognized; the nearest capable relative of the dead king was elected; obviously in most cases that relative would be his brother or his eldest son. Alfred succeeded his brother, and no voice protested that Ethelred's children were wronged. Edred was chosen by the Witan on the death of Edmund, whose two sons were yet children. This election was no mere form; even the Danish kings found it necessary to veil the fact of conquest by the fiction of a forced election. At the very close of early English history the Witenagemot exercised their ancient right under exceptional and perilous circumstances in the election of Earl Harold.

A natural deduction from the right of electing the king is the correlative right of deposing him; although the occasions on which the latter right was exercised were of comparatively rare occurrence. The Anglo-Saxon Chronicle,[1] under the

[1] Anglo-Saxon Chron. (Rolls Series), vol. i. p. 82.

year 755, records the deposition of Sigebert by the West-Saxon Witan, acting under the leadership of a rival claimant of the throne. "*This year Cynewulf and the West-Saxon Witan deprived Sigebert of his kingdom, except Hampshire, for his unjust doings.*" In A.D. 774, the Northumbrian Witan deposed Alcred; and the history of the northern kingdom is full of the sudden and violent depositions of kings, some of which at least must have been regular proceedings, although many no doubt were not. These cases belong to the Heptarchic period. After the consolidation of the kingdom under the line of Cerdic, three cases of deposition occur. When Ethelwulf returned from his pilgrimage to Rome, we learn from Asser,[1] whose evidence, however, in face of the silence of the Chronicle, is scarcely conclusive, that the West-Saxon Witan, at the instigation of Ethelbald, deposed him. The Mercians deposed Edwy in favour of his brother Edgar; and the Witan of the whole kingdom abandoned Ethelred II. in A.D. 1013, and accepted Swegen. In every case the action of the Witenagemot was the result of dynastic intrigue or of some other external agency; and without such agencies, it is more than probable that neither Ethelwulf, nor Edwy, nor Ethelred

[1] Asser, ed. Wise, 1722, pp. 8–10.

would have been deposed. Deposition, it must be remembered, involves a far greater exercise of power than election; for it is in itself something far more than the simple undoing of election. The king is king by virtue of something more than election. His assumption of the crown is hedged round by the threefold sanction of election by the Witan, unction and coronation by the Church, and the oath of allegiance from the nation. That king was either very guilty or very unfortunate whose conduct brought into play so far-reaching an act of power.

Summary.

We have traced at some length the development of the kingship, because, perhaps, that development is one of the most characteristic features of early history. The process which changed the tribal king into the territorial king, the lord of the land, went on under various conditions in other portions of the constitution. Everywhere the personal and official tended to be absorbed by the territorial and feudal. We have observed this tendency operating in the case of the *comitatus*, changing the personal relationship between the ealdorman and his gesith into the semi-feudal relationship between the king and the land-holding, service-rendering thegns. We have seen that the Danish wars had results in the same direction, by inducing the free ceorls to

purchase security by the sacrifice of their freedom, and by substituting the territorial for the personal relation to the king. We must now slightly change the method of our inquiry, and mark the working of the same tendency in its results on the judicial and military organization of the country.

Opposing principles in English Constitutional History.

Feudalism includes two essential conditions, which may serve as the tests or marks of the feudal state. The one condition attaches to the land the duty of military service to an over-lord; the other attaches to the land the duty of attending the court of the over-lord. The feudal tenant, in short, owes his over-lord "suit and service."

By applying these tests to the England of the eleventh century, we ascertain, perhaps, with the greatest exactitude, the extent of the progress made by the feudal principle, and the extent to which the institutions of the country retain their primitive freedom. And here it is necessary to remember that from the very first among the English, both in their military and in their judicial institutions, there had operated two principles, fundamentally opposed.

There was first the popular principle which lay at the foundation of the military and judicial arrangements of the tribe. This principle im-

posed on the freeman the honourable burden of sharing in the national defence, and the important privilege of trial by his fellows. The courts of justice and the host were organized on a popular basis; indeed, at first the distinction between the two was a very slight one. The judicial arrangements reproduced for another purpose the divisions of the host. After the settlement in Britain, the judges in the courts of the township, the hundred, and the shire were the suitors upon whom, as upon all freemen, lay the burden of national defence.

Concurrently with the popular principle, there operated another and rival principle, which may be called feudal. This lay at the root of the comitatus. The companions who followed their chief to battle recognized his jurisdiction in time of peace. The feudal principle removed them to some extent from the host of the freemen, and from the courts of the folk.

In the dim past of the earlier history of the English, these rival principles can be perceived at work. Side by side there exist upon the soil of Britain the quasi-manorial communities of the lœts, and the village-communities, the townships of the free ceorls. The book-land of the gesith and the eorl is contrasted with the alods of the freemen. Eorls coexist with

thegns, the free ceorl with the commended ceorl, the freely elected township-man presiding over the moot of the free township with the lord's nominee, gerefa or bailiff, presiding over the moot of the incipient manor.

These concurrent principles thus embodied in concrete forms are found in collision with one another, and with an invariable result. The weaker principle yields to the stronger.

Feudalization of the military organization,

On the side of the military organization of the nation the feudal principle encroached on the popular, as commendation transformed the freemen under the banner of the sheriff into the dependent following of the thegn. The host which the ealdorman led forth from the shire to resist invasion was indeed the folk in arms, the primitive host, but it was the folk organized to a very large extent on the feudal model. In theory the immemorial obligation of the *fyrd* rested on every citizen; in fact, before it reached the mass of the citizens that immemorial obligation had been transmuted into the summons of an over-lord. The course of the political history to some extent counteracted the tendency of the constitutional. The early English wars were almost exclusively wars of defence. The principle which dictated to the freemen the duty of the *fyrd* was per-

petually reasserted by being perpetually acted upon. Had it not been so, the popular organization of the national defence might have easily sunk into the insignificance into which the kindred organizations of the continent fell, surviving only for the lower purposes of police. Watch and ward, police and defence, formed the twofold obligation of the *fyrd*. In the organization of the national defence, perhaps more than in anything else, the primitive popular principle of the national polity succeeded in asserting itself continuously against its rival.

and of the judicial organization.

On the side of the judicial organization of the nation, the feudal continually gained ground at the expense of the popular principle. The process was somewhat different. Here it was rather by narrowing the sphere of action, than by interfering with the action itself, that the advance was made. The jurisdiction of the popular courts was ever being encroached upon by the creation of rival private jurisdictions.

It has been already pointed out that the gesiths or thegns of the king were in his *grith* and under his jurisdiction. This was the fact when the tribe possessed no settled territories, and the tie which bound companion and chief together was purely personal. It continued to be the case where the tribe had settled in

[illegible] *Constitution.*

[illegible] begun to lose [illegible] gn, with his [illegible] the folk-land, [illegible] At a very [illegible] practice to [illegible] jurisdiction. [illegible] ormula "*Sac* [illegible] of which the [illegible] ot free from [illegible] ble that in [illegible] *soc* conveyed [illegible] urt only, not [illegible] nes the latter [illegible] stance occurs [illegible] Worcestershire, [illegible] in seven out [illegible] re he has no [illegible] nd grants to [illegible] asing portion [illegible] iction of the [illegible] ht of justice [illegible] incident, of [illegible] normal hold- [illegible] privileges of [illegible] te court.

[illegible] erritorial all [illegible] the kingship [illegible] powers; now

the same principle snatched from the kingship the substance of strength, and left but the shadow. The zenith of the monarchy synchronized with the rapid rise of the private franchises, by which monarchy was in danger of being reduced to a name. When over whole districts the royal power was vested in powerful local landowners—when as judges and *land-ricas* these sat as presidents in the hundred-courts and received a share of the profits of the hundred, when they exercised jurisdiction over the lesser landowners—then, indeed, the English king was menaced with the lofty impotence of the feudal position. This state of things did not exist before the reign of Canute (A.D. 1016–1035); the appearance of the *land-ricas* is just one of those facts which give the reign a revolutionary appearance. Another is the division of England into the four great earldoms of Wessex, Mercia, East Anglia, and Northumbria.

Division of the kingdom into four great earldoms.

That division seems to form a symmetrical completion of the process which had been steadily in progress during five centuries towards feudalism. The anarchy of Edward the Confessor's reign was the logical and inevitable outcome of the policy of Canute. The great earldoms became practically hereditary in the families of their first possessors; the power of

the crown was as nothing before the power of the earls. The position of the Confessor between two rivals of equal strength and ambition—by turns the tool of both—can only find a parallel in a country which was essentially feudal. Edward the Confessor may share with his contemporary, Henry I. of France, the position of the typical feudal king. Nevertheless, the political anarchy did not involve any very considerable disturbance of the organization of the country. The establishment of the great earls seems to have left untouched the shire-system. The royal writ was sent to the earl and bishop and sheriff of each shire, although all those officers included several shires in their jurisdictions. It is possible that the earl presided in the shire-court by a deputy who bore the discarded title of ealdorman; but this is mere conjecture. The shire-moot survived the changes of Canute's and the anarchy of Edward's reign, not unaffected by them, but still retaining a very considerable proportion of its ancient importance. However dilapidated in its composition, and depressed from outside by the progress of feudalization, the shire-moot embodied in its organization and its functions almost all that remained of the primitive freedom of the English polity.

The shire.

The historic shires had not a common origin. Some represent the primitive union of several more ancient districts, tribal or other, in a federation for religious, judicial, and political purposes; others, especially those in Wessex, represent the kingdoms first established in Britain by the invaders; others, more especially those in the North, represent the later district, into which the country was artificially divided for purposes of government by the West-Saxon kings. And the organization of the shire bears witness to its threefold origin. The shire-moot is an agglomeration of hundred-moots; it is also the folk-moot of the tribal kingdom; it is also the unit for purposes of government. On the one hand it stands in intimate relationship with the popular courts below, and on the other it connects itself through its officers with the Witenagemot and the king. Thus it brings the local machinery of the hundreds and the townships into connection with the central government. In its popular composition it bears witness to its popular origin. In its self-sufficiency it commemorates its ancient political independence. In its relation to the central power it reveals the design of its later creation. The shire-moot was nothing else than the collection together of the hundred-moots under the officers of the shire. As such it included three several elements: the popular element,

Character of its organization.

represented by the reeve and four men from every township; the feudal element, represented by all lords of land—shire-thegns—both those who attended the hundred-moot, and those whose more extensive franchises exempted them from attendance; the official element, represented by the hundred-man and twelve "senior-thegns" from every hundred. The officers of the shire were three: the bishop, the ealdorman, or later the earl, and the sheriff, representing respectively the Church, the folk, and the central government. The bishop and the ealdorman were members of the Witenagemot. It is quite true that the bishop's diocese was not always restricted to a single shire, and that both ealdormen and sheriffs exercised jurisdiction over several shires at once; still the constitutional fiction supposed a bishop, an ealdorman, and a sheriff to every shire, and the king directed his writs accordingly, although, probably, in many shire-moots, bishops, ealdormen, and perhaps even sheriffs, only appeared by their deputies. Although the bishop sat in the shire-moot, and expounded there the "law of God," that court by no means formed the sole sphere of his judicial activity. Like other great landowners, he possessed his own franchise, and, as a spiritual officer, his religious

Its officers.

(1) *The bishop.*

jurisdiction. It is, however, certain that the close union between Church and state dispensed with the rigid definitions of their respective spheres of action which marked the subsequent age. The piety and policy of the English tribes assigned to the clergy a position of great power and dignity. An indication of this is to be found in the law of Ini,[1] which decrees that the *bot* for the bishop's *burg-bryce* shall be equal to that for the king's, in both cases one hundred and twenty shillings, while the penalty for a similar offence in the case of an ealdorman is fixed at eighty shillings. As the number of bishops increased and the supremacy of the West-Saxon kings became assured, the relative importance of both underwent an immense change. The tenth-century record of the *wergilds* of the northern people witnesses to this change.[2] There an archbishop is ranked on an equality with an etheling, and a bishop with an ealdorman, while the king's *wergild* is estimated at a much greater amount and on a different basis. Although the relative importance of the bishops thus diminished, at the close of the early English period they still appear in possession of an immense influence. Forming the most homogeneous and

[1] "Select Charters," p. 62. [2] Ibid., p. 65.

politically capable section of the Witenagemot, exercising a considerable influence over the national courts, adding to both the peculiar force of their spiritual position, the clergy exerted an extensive and beneficent authority in the affairs of the nation.

(2) *The ealdorman.*

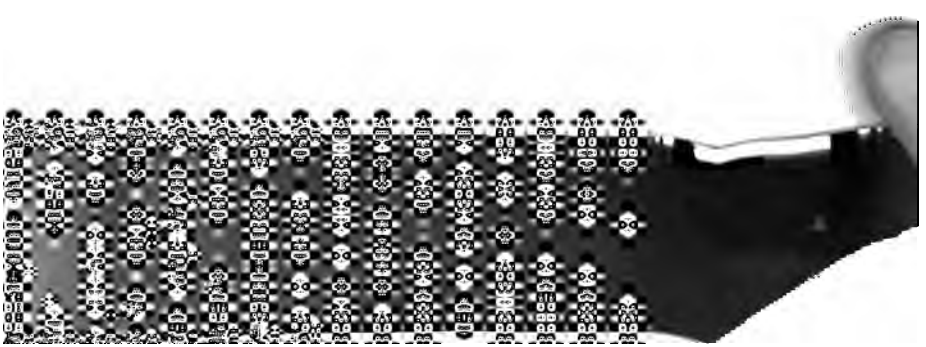
The ealdorman is the most imposing figure among the officials who preside at the shire-moot. Perhaps himself the descendant of the ancient kings, he has not altogether lost his royalty. Around him gather the cherished memories of the tribe—memories which survive the shock of West-Saxon conquest, and preserve the individuality of the once independent folk. He takes his place as president of the court; he leads forth to war the forces of the shire. He represents the popular element in the administrative machinery of the country. As the king symbolizes the unity of the nation, so the ealdorman symbolizes the unity of the shire. He typifies, so to say, its individuality. Within historic times the king and Witenagemot would seem to have united in appointing this officer; but the consent of the shire was also expressed, probably in the ceremony of his installation. The ealdormanship was less affected by the feudalizing tendency of the time than many other institutions. In most

the host. Moreover, he was a member of the Witenagemot of the realm, where he occupied a position of special importance as distinctively representing the nation. His dignity was equal to his power; it was hedged round with various safeguards. A higher wergild and a weightier compurgatory oath, a limited right of sanctuary belonging to his house, the heavy penalties attached to insults addressed either to his dwelling or his person, marked his superiority to every subject save the primate. As his power was great and his dignity lofty, so also was his income considerable. Public lands, a share (probably a third part) of the profits of jurisdiction, voluntary offerings, a share in the profits of war, the proceeds of the regalia on his own public and private lands, perhaps in some cases the right of coinage,—these were the main sources from which the ealdorman drew the income which enabled him to maintain the state befitting his position.

One circumstance gives an unique interest among early English institutions to the ealdormanship. It alone failed to perpetuate itself in any recognizable form in the later history of the constitution. The earl who, under the Danish dynasty, supplanted the ealdorman, monopolizing his functions and almost oblite-

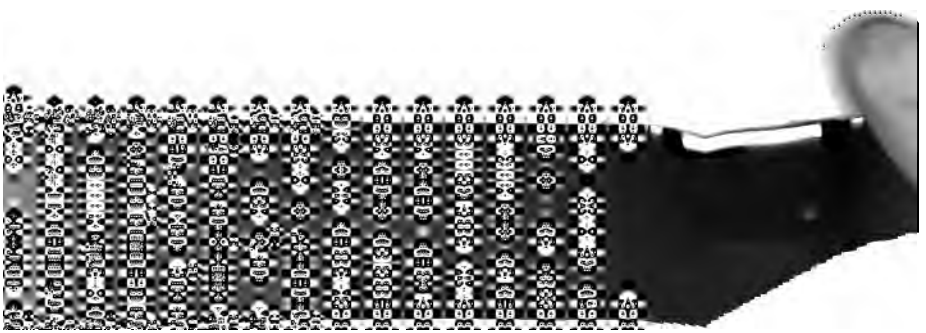
efa,

efa, (3) *The sheriff.*



ealdorman at the head of the freemen of the shire; in time of peace he, not the ealdorman, is the "constituting officer" of the shire-moot. Without his presence no shire-moot can be held. He alone, in the absence of bishop and ealdorman, can hold a shire-moot.[1] Wulfsige, the sheriff of Kent, acting by himself, decided an important dispute about the title to some land, in which the Archbishop St. Dunstan appeared as one of the litigants. The sheriff was the principal fiscal officer of the shire. He had charge of the royal estates, and of the folk-land. He levied all fines to the king, seized the lands and chattels of criminals, and, when the pressure of the northern wars compelled the imposition of national taxation, collected the taxes levied on the nation by the Witenagemot. There can be little doubt that the sheriffs were guilty of oppression in their fiscal arrangements. "*This is the alleviation,*" runs the law of Canute,[2] "*which it is my pleasure to secure to all the people, of that which hath heretofore too much oppressed them. First, I command all my reeves that they justly provide for me on my own, and maintain me therewith: and that no man need give them anything as 'feormfultum'*

[1] "Dipl. Aug. œvi. Sax.," p. 273.
[2] "Select Charters," p. 74.



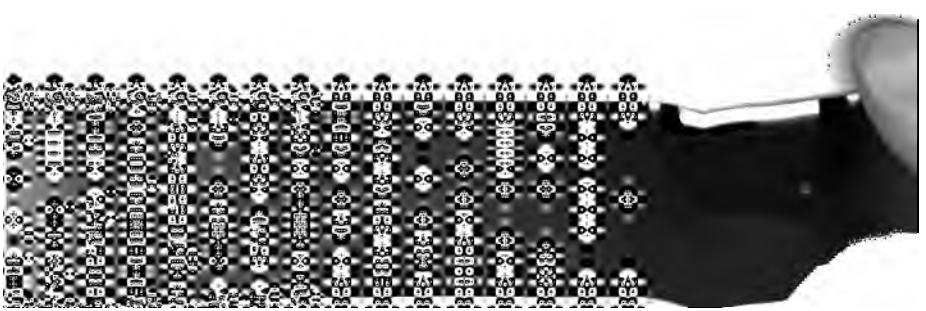
amends for the great fault of the Witenagemot, viz. its non-representative character. Instead of the constitutional obligation to submit to the acts of its representatives, the nation would seem to impose, as a preliminary to submission to the acts of its wise men, the condition of its own acceptance.

A peculiar constitutional interest attaches to the organization of the shire, for thereby was carried forward into the succeeding age the forms and something of the spirit of the ancient administration. Under all the weight of feudalism it remains a memorial of the free past, until in the twelfth century it is utilized by the royal power to provide a simple and sufficient machinery whereby the task of self-government is accomplished.

Importance of the social history of the period.

The union between the social and the constitutional history of a people is intimate and inseparable. The tendencies which work in the one will also work in the other. The history of the constitution will advance *pari passu* with the history of the social state. The one interprets the other. We have said that the tendency of early English history is from greater freedom to lesser freedom, from liberty to feudalism; and we have traced the unequal struggle between the principle of primitive freedom on

(1) *Status.*



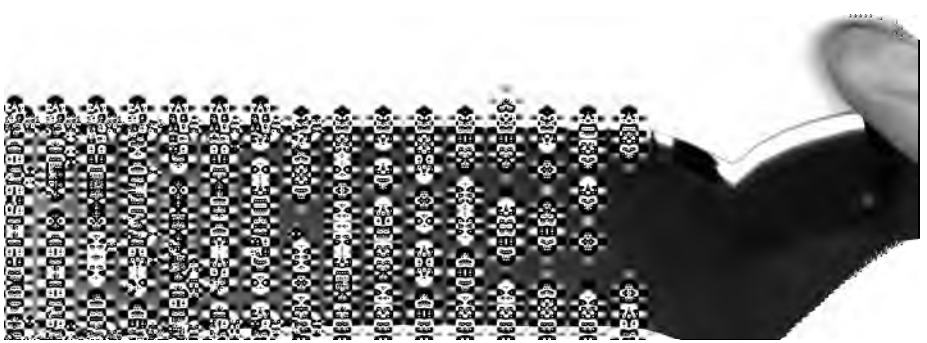
shires which form the old West-Saxon kingdom, the manorial system predominates, and alodial tenure is unknown. There, in the region of the Danelaw, it is scarcely an exaggeration to affirm that the converse is the case. *Sochmanni* and *Liberi-tenentes*, elsewhere unknown, form in Lincolnshire and East Anglia a great proportion of the population. Mr. Seebohm[1] has shown with admirable clearness the distribution of the population according to the classes mentioned in Domesday. Generally it is true to say that the unfree element is strongest in the south, and the free element strongest in the Danish districts.

We infer, then, in the second place, that the development of the feudal principle, though continuous, was not symmetrical; and that an antagonistic force, a check on the process, was found in the northern invasions.

(2) *Land-tenure.* Turning from the question of status and applying ourselves to that of land-tenure, we find an enormous mass of land, once the national land or folk-land, now registered in the Domesday Book as the *Terra Regis*, the royal demesne. We find, moreover, the king regarded as the ultimate owner of all the land in the kingdom. The *cyning* of English antiquity is placed in

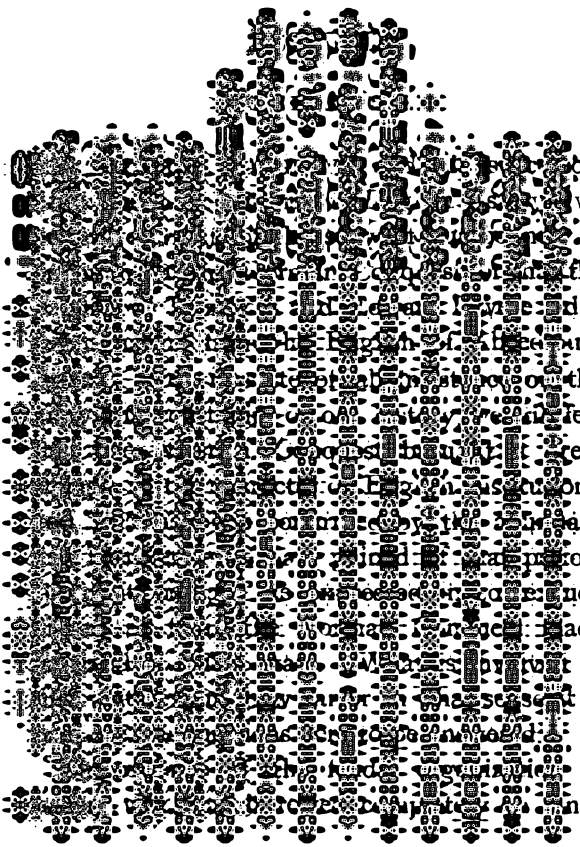
[1] "The English Village Community," ch. iii.

Summary.



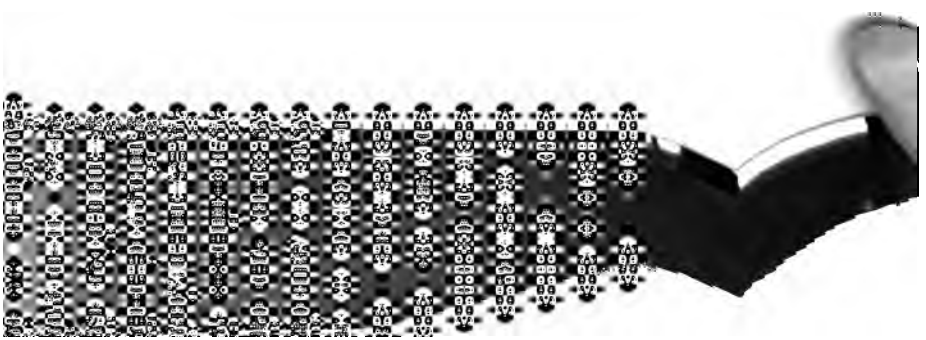
The view that regards the six centuries of early English history as the arena of an unceasing struggle for supremacy between the rival principles of freedom and feudality, ensures at least a continuous interest in the history, for unquestionably that struggle is the predominating fact, which lies at the root of all the inconsistencies of the period. In that long and dubious contest the events of the social, political, and religious history are factors. The ultimate outcome is the victory of feudality; but the defeated principle is rather driven out of sight than destroyed. Freedom has capitulated to feudality, on conditions which ensure at least a continued existence.

It is precisely at this crisis that the Norman conquest takes place; and it is because it takes place at this crisis that its importance in the constitutional history of England is so immense and far-reaching.



The Norman Conquest. its importance.

Feudalism rests on a



system of land-tenure.

tenure, and on one system of land-tenure—a system in which ownership was divided between the actual tenant of land and the lord "of" whom he "held" it, and in which the relation as to land was accompanied with a close personal tie between the lord and tenant, involving mutual duties and responsibilities. He who was lord to one man or set of men, might and usually did himself hold his estate of a superior lord; so that society came to be made up of hundreds of series of lords and tenants, beginning with the villein, who was lord of no man, and ending with the king, who was tenant of no man. The duty of the lord was to protect his tenant, of the vassal to serve his lord; which meant that over the greater part of Western Europe the vassal followed his lord to the field, and was subject to the jurisdiction of his courts. And it is clear that, where the central government was weak, the result inevitably was to split up a state into a number of petty principalities; in the language of Guizot,[1] to fuse together sovereignty and property, by giving to the lord of a district all or most of the rights over his tenants which make up sovereignty.

Origin of this system.

It is now known that this organization did not arise on the Continent, as used to be sup-

[1] "Histoire de la Civilisation en France," iii. 29.

posed, from a partition of conquered lands by the chiefs of the barbarian tribes which overthrew the Roman empire. Its growth was gradual, and was due to the converging action of many causes at work during five centuries. Chief of these causes were: (1) grants of *benefices*, *i.e.* of estates to be held in usufruct—so bringing about the division of ownership; (2) *commendation* of inferiors to superiors, which created the relation of vassalage, and came to be inseparably associated with the gift of a benefice, so that the receiver was bound to personal fidelity to the grantor; and (3) the grant to territorial lords of *immunities*, or exemptions from the national courts, which completed the power of the lord by giving him jurisdiction.[1] But in England such influences had either been absent, or had played but a secondary part. For here it was an institution which abroad was of little importance, namely, the *comitatus*, or body of immediate companions of the king, which did most to modify the older system. It was out of this, as the previous essay has shown, that thegnhood had arisen; and thegnhood, working together with grants of jurisdiction and the police system

Difference between England and the Continent.

[1] This has been worked out most clearly by Waitz; but for substantially the same explanation, see Hallam, "Middle Ages," note xi. to ch. ii., and vol. i. 239 (ed. 1878).

which compelled every man to find a surety, had certainly made England before the Norman Conquest very much like a continental feudal state. But in England the dominant idea was still that of personal relation—of a thegn to the king, of a man to his *borh*, or to his lord by commendation, and not that of territorial obligation—of service or jurisdiction *because of* land. Social organization did not yet rest on tenure.

Consequences of the Conquest: all land now held of the king.

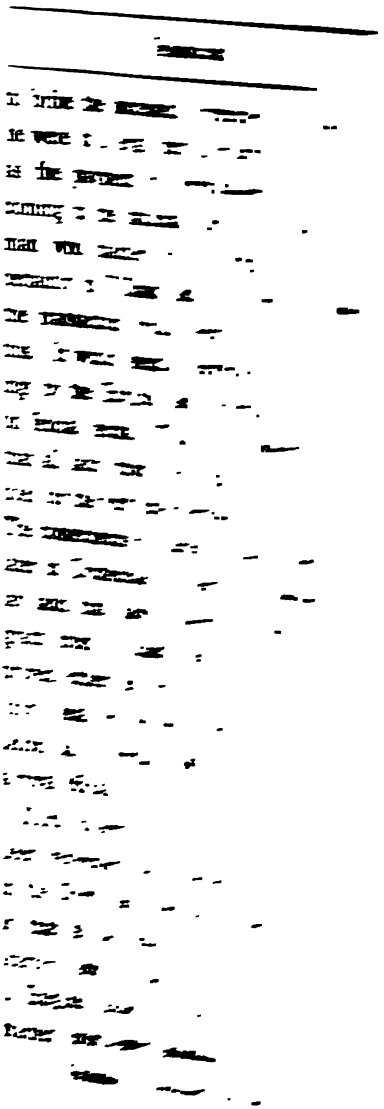
Let us now look at the immediate consequences of the Norman Conquest. In the first place, all land comes to be held of the king, mediately or immediately; he is the supreme lord of land, and all men are his tenants. It may not indeed at first sight appear that the position of a great thegn before the Conquest differed from that of an important tenant-in-chief under William I. The thegn forfeited his land if he did not obey the summons to the field. Moreover, although thegnhood did not necessarily imply a close personal relation, as of a *gesith*, to the king, probably most thegns were in fact in such a relation, or were descended from men who were *gesiths* when they received their estates from the king. The thegn's situation was then in these respects roughly parallel to that of the feudal vassal. The important difference is this, that military service before the

Conquest was a duty equally incumbent on every freeman, as a freeman, and not a special duty of landholders in a certain relation to the prince. Refusal to obey the summons to the host was visited with severe penalties. But although the penalty in the case of a thegn was the forfeiture of his land, it was not because such land had been given upon definite condition of service. His land, if indeed it had been received as a grant, had been given in absolute ownership, as a reward for past and not in consideration of future service. These distinctions seem, perhaps, unimportant, but they involve a difference of principle which it is essential to observe. The thegn was regarded as having complete property in his land; the ownership of the tenant-in-chief, on the contrary, was but partial, and was limited and conditioned by the claims of the grantor.

Means by which this was effected.

The change from the old to the new tenure was effected in two ways: by grant to Normans of forfeited land, and by confirmation of the rights of Englishmen. The lands of those who had fought for Harold at Hastings were treated as forfeited, and speedily granted to William's followers; and the subsequent rebellions of the West and North enormously increased the number of forfeited estates at his disposal.

But the only method of holding land familiar to the Normans was the feudal tenure just described. The natural consequence was that William conferred these lands in the way usual on the continent, *i.e.* to be held of him subject to the conditions there customary. Every recipient did "homage," by placing his hands between those of his lord and acknowledging that he became his "man." Henceforth all the great lords were tenants-in-chief of the king. And the same was the case with those English who were allowed to remain in possession of their lands. Mr. Freeman has shown that the evidence of Domesday and of the English Chronicle points to a general redemption of estates by the English immediately after William's coronation. "Archbishop Ealdred consecrated him king," says the Chronicle, "and men paid him tribute and delivered him hostages and *afterwards bought their land;*" "when the English redeemed their lands," appears in Domesday as a time from which men reckoned. We can scarcely be mistaken in inferring that those who had taken no part in resistance to William were confirmed in the possession of their estates on the payment of considerable sums of money. The ordinary Englishman would think that it was unfortunately necessary



the first
a special
nd marks
ls institu-
the Con-
creation
became
the prin-
be tried
the same
iate lord
ourts are
itive pre-
tice; but
:s of the
battle of
:ad given
Edict of
n should
gment of
just con-
t of land,
reatment
held of
vho were
ure. In
ie stamp

owing to the principle of trial by peers.

But the only method of holding land familiar to the Normans was the feudal tenure just described. The natural consequence was that William conferred these lands in the way usual on the continent, *i.e.* to be held of him subject to the conditions there customary. Every recipient did "homage," by placing his hands between those of his lord and acknowledging that he became his "man." Henceforth all the great lords were tenants-in-chief of the king. And the same was the case with those English who were allowed to remain in possession of their lands. Mr. Freeman has shown that the evidence of Domesday and of the English Chronicle points to a general redemption of estates by the English immediately after William's coronation. "Archbishop Ealdred consecrated him king," says the Chronicle, "and men paid him tribute and delivered him hostages and *afterwards bought their land;*" "when the English redeemed their lands," appears in Domesday as a time from which men reckoned. We can scarcely be mistaken in inferring that those who had taken no part in resistance to William were confirmed in the possession of their estates on the payment of considerable sums of money. The ordinary Englishman would think that it was unfortunately necessary

to bribe the successful Pretender. Possibly, if he were of a legal turn, he might look upon it as the payment of *fyrdwite*—a fine for not coming to the national host in support of the man who claimed to be rightful heir. But certainly, to William and the Norman lawyers, the transaction would seem much more than this. It would seem a surrender of their holdings by the English, and a regrant by William on feudal terms. Thus, the lawyers' doctrine that all land must be a grant from the crown, does for the first time become true in England.[1] The consequence is clearly marked twenty years later in Domesday. There it is assumed of all lay land that lawful posession can rest only on grant from William, and that this must be proved either by producing a writ under the king's seal, or showing evidence of *livery of seisin, i.e.* a formal putting in possession by a royal official.

Fiction as to William's position: its importance.

Much, indeed, of the land which had at first been redeemed was forfeited after the risings in the North and West, and given to Normans, so that at the time of the Domesday survey scarcely any of the lay tenants-in-chief were of English blood. Yet William carefully abstained from ever assuming the position of a

[1] Freeman, "Norman Conquest," v. 369.

conqueror who had a whole country at his disposal. He throughout maintained the fiction that he was the rightful successor to the throne of the Confessor, and that changes in ownership were consequences simply of individual misconduct. Nowhere, therefore, was there an entirely new partition of territory. The usual practice was to grant to a Norman an Englishman's forfeited estate in a particular district as a whole; so that the new lords stepped into precisely the same positions as to extent and character of property and authority as were held by those they displaced. It is not difficult to see what would follow from such a substitution. Every important English landholder had stood in the position of patron or superior to many different classes of dependents. Obscure as is the early history of the manor, it may safely be said that by the middle of the eleventh century almost every township was in some measure subject to a lord. In many cases, no doubt, this dependence was due to the fact that the village community had been formed by settlement on a lord's land; but in many others it was caused either by the voluntary commendation of the inhabitants to the powerful man of their district, or by a royal grant giving to such a magnate jurisdiction over the inhabitants.

Results of the change in landholders: as to the villagers,

Certainly the condition of things was far from being uniform in different parts of the kingdom, and wide differences remained in degree of dependence. Of all these distinctions, to him unintelligible, the Norman grantee made very short work. Accustomed to the Norman manor, in which every man was subject to the jurisdiction of a seigneur, and held his land of him, he would treat the people of an English village in the same way. Such and such men were somehow dependent upon him. Such and such men appeared in a court of which the president was his steward, and of which the fines were paid to him; "then, of course," he would think, "such men must be my tenants, must hold their land of me."

as to the lesser lords.

But as yet we have mentioned only the two extremes of the feudal scale, the tenants-in-chief, and the villeins or villagers. Between these were many classes and gradations of rank. The great king's thegns had, before the Conquest, thegns of their own, who were also in the possession of land, probably often of whole townships. Such thegns would soon be regarded as sub-tenants of the Normans who had taken the place of their lords, as holding their estates not, as before, in complete ownership, but by the grant of their superiors and subject to the rights

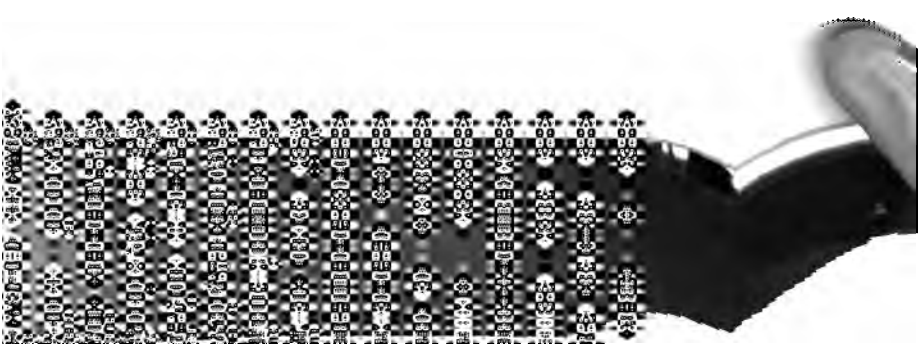
of those superiors. Moreover, Domesday shows that many of the smaller English landholders who had before possessed land in their own right, recognizing no man as their lord, were able to retain their land only on condition of sinking into dependence as tenants of a neighbouring lord. Thus everywhere the simple feudal tenure took the place of the confused congeries of rights and customs which had previously existed. Instead of the two thousand proprietors in their own right of the time of the Confessor, there were now, including ecclesiastical holders, some six hundred tenants-in-chief.[1] The greater part of the agricultural population were, doubtless, immediately subject to these tenants-in-chief, so that their lord was the only person between them and the king. But there were also almost eight thousand sub-tenants, half of them English thegns, holding of greater lords manors and other lands upon which were freemen, socmen, and villeins.

Summary of changes in tenure.

The speedy result of the Conquest, therefore, was to complete the process of feudalization of land-tenure which had long been going on; to effect "a universal assimilation of title;" to make the king the supreme land-lord; to give to the relations between the greater landholders

[1] Gneist, "Hist. of the Engl. Const.," i. 125 (Eng. trans.).

The question to be answered.



and the social relations based on it to become feudal. And such a policy may be traced in almost every measure of William and his two successors.

Division of the subject.

The different parts of the subject are so inextricably connected, that any systematic division is impossible. But it will perhaps add to clearness of thought, if an attempt is made to distinguish (1) what the introduction of feudal tenure brought about in society, (2) what constitutional results sprang from it, and (3) what results in government the policy of the Norman kings prevented.

I. Social changes due to feudal tenure.

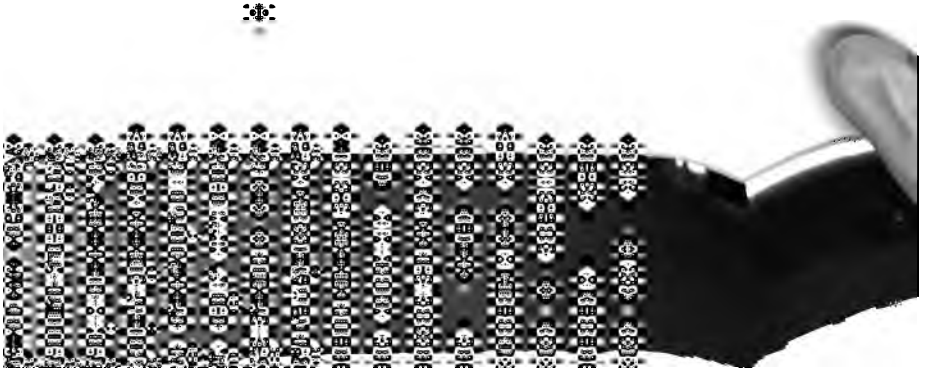
I. It has already been pointed out that the feudal bond was of the nature of a contract, and that the tenant held his land on condition of performing due service to his lord. The service which was of by far the greatest importance was military service. At first, the change in this respect, produced by the introduction of the new tenure, was rather in idea than in fact, in that men were bound to serve the king no longer merely as citizens, as members of the nation, but also because such service was the condition upon which they held their estates. For some time before the Conquest the customary quota, at any rate in some counties, seems to have been one fully armed man for

(a) Military service.

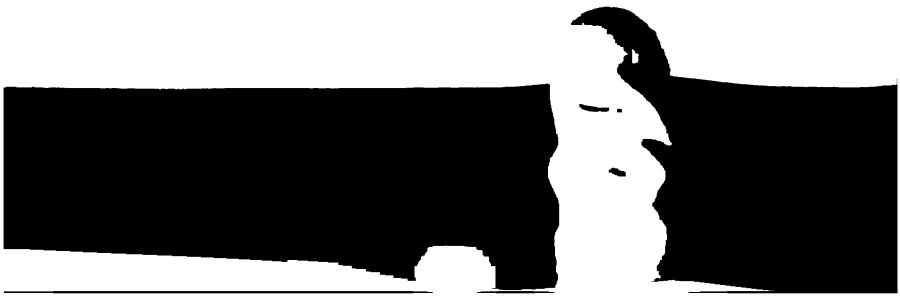
was
ood
mes-
ister
the
ssal's
one
de-
nated
state,
nite

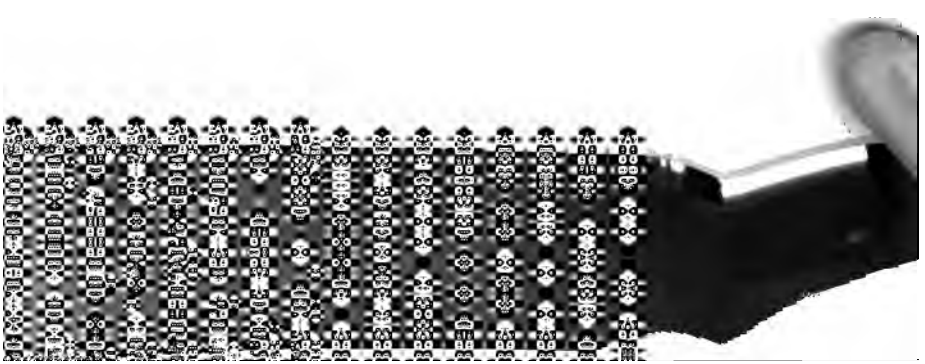
n of *Division into knight's fees.*
ings
and
ssals
soon
was
as a
knight's
whole
fees,
one
the
unit
many

t this



arrangement was the result of a gradual process, which occupied the hundred years which followed the Conquest. With wars frequently recurring, with sovereigns strong enough not to let the vassals forget the terms on which they held their estates, nothing was more natural than that the vassals should carve off portions of their land, and give them to sub-tenants, on condition that each should be ready to serve when summoned. Thus they would save themselves from the very real danger of not being able to find enough knights to make up their due quota when called to the field. The piecemeal adoption of this expedient throughout the century is easily observable, especially upon the lands of ecclesiastics, for whom it was naturally more difficult than for laymen to find men to serve for them on an emergency. And when the division was completed, and the whole of the country parcelled out in this way, the knight's fee, when there was no other guide, was reckoned as on an average five hides. The estate from which a knight's service was due was, however, sometimes as small as two, sometimes as large as twelve hides, according to the conditions of the enfeoffment, which may have been determined by grace or by the character of the land; and indeed it would seem from inci-



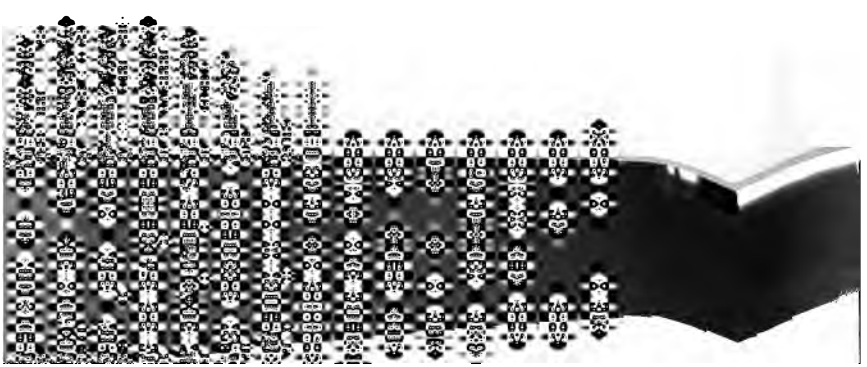


The military force before and after the Conquest.

together the feudal array, when he thinks fit, by summoning the tenants-in-chief, that is those directly holding land of him, to fulfil their obligations; while these vassals are in the same way enabled to furnish their due contingents because their sub-tenants are similarly bound to them. It is easy to see that with a strong and prudent sovereign such an organization must have enormously increased the military power of a kingdom by individualizing responsibility. Before the Conquest it had been necessary for the sheriffs, each time an army was needed, to negotiate with the moots of every shire as to the number of armed men they would provide. Local custom varied, and a county or town was frequently permitted to send a smaller number than its due. Even if a king's thegn did not appear in the host, it was only the king's thegn himself that could be punished. But after the division into knight's fees had taken place, the extent of the obligation of each military tenant was unvarying and exactly known; and there was a ready means of punishing the absence even of one knight. Thus the feudal array was more constant in number and quality than any force which an earlier system could have furnished.

(β) *Primogeniture.*

A consequence of military tenure which has



caused primogeniture to be insisted upon, and accepted as the rule for all lands held *in chivalry*, by military service; and the tendency towards the extension of this rule was so strong that even in the case of *socage* lands, *i.e.* lands held by free tenants doing suit and service, but not subject to military duties, it was generally adopted by the end of the thirteenth century.

(7) *Feudal incidents:* As to what were called the *incidents* of feudal tenure, it is readily seen that they are all deductions from this military conception. The

(1) *forfeiture,* simplest and most obvious were *forfeiture* upon violation of the conditions of tenure by disobedience to the summons to war, still more by

(2) *escheat,* fighting against the lord; and *escheat*, the return of an estate to its immediate lord who represented the original grantor, on the failure of heirs to a tenant. Not only did the land fall back into the hands of the lord in a case such as this, but in theory it was resumed temporarily on the death of every tenant. On the continent the grant of a benefice had at first been for life only. The renewal of the grant to the son of the previous owner was at the lord's pleasure. And although the hereditary character of fiefs was generally recognized before the end of the ninth century, a trace of the older practice remained in the necessity for the

(3) *relief,*

compared with heriot,

lands which had for a time reverted to the overlord.

(4) *wardship,*

When an heir was under age, the lord enjoyed the right of *wardship*, *i.e.* of managing and receiving the profits of the fief until the tenant came of age. When the lord was the king, the right of wardship, with the profits arising from it, was often sold to some courtier or other baron who made a satisfactory offer. Between guardianship in chivalry and guardianship in socage there is a significant contrast. In the latter case the guardian of the lands is the nearest kinsman who cannot succeed, until the heir arrives at the age of fourteen, when he can choose a guardian for himself; the guardian must manage the estate for the benefit of the heir, and account for receipts and expenditure. But in the case of lands held in chivalry the profits go to the lord, because in idea the estate is his during the interval; it has reverted to its original grantor, although a custom which becomes a law, enforced later by the assize of *mort d'ancestor*, obliges him to put the heir in possession when he comes of age.[1] And the heir cannot fairly demand more, for until he reaches manhood he cannot render that military service on condition of which the estate has been given.

[1] Cf. Pollock, "Land Laws," 60, 61.

In the case of an heiress, moreover, the lord had the right of *marriage, i.e.* the right of marrying her to a person of his choice, usually on consideration of a payment made by, or on behalf of, that person, or of demanding a fine upon her refusal to marry, or in return for leave to marry as she pleased. The heiress would never herself be able to render the military service due; it was therefore necessary, so it was argued, for the king to choose a husband whom he could trust to perform the duty for her. So important was it to prevent lands passing into the hands of the king's enemies, that the sovereign insisted on the necessity of his consent even to the marriage of the heiress of a tenant-in-chief during her father's lifetime. In later times, this right of marriage was extended to include the right of marrying male heirs if under age to wives of the lord's choosing. This, however, was based on a strained construction of a clause in Magna Carta, and clearly had no justification in the theory of tenure.[1]

(5) *marriage.*

Such were the incidents of feudal tenure till they were abolished in the seventeenth century. They grew up gradually on English soil. They were not suddenly introduced from abroad at the Conquest, for on the continent and in England

Ranulf Flambard and the feudal incidents.

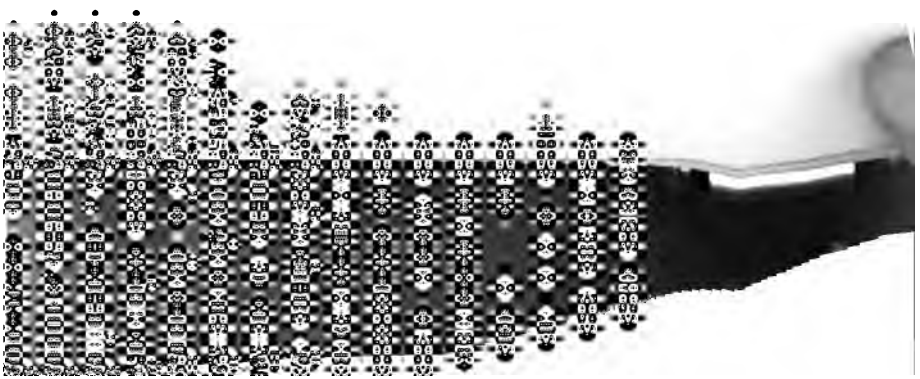
[1] Digby, "History of the Law of Real Property," 106.

alike the time when they first take a systematic shape was the eleventh and twelfth centuries. With us, indeed, their development and elaboration can, with much probability, be assigned to one man, the minister of William II., Ranulf Flambard. In the reign of William I. they are scarcely to be seen even in germ. The charter of Henry I. at his accession, the main purpose of which is to reform the abuses introduced by his brother, takes the incidents for granted, and indeed, recognizes that every lord has the same rights over his vassals as the king over his tenants-in-chief. Their development must therefore have taken place in the reign of William II. Now Flambard is directly accused of instigating a policy toward the lands of the Church which was based on the same idea, the idea that an estate reverted to the king whenever there was no holder who could perform its duties—in the words of the chronicler, that the king was "every man's heir." It is therefore likely that it was Flambard who shaped the burdens upon lay tenants. In so doing he did but continue the policy of the Conqueror, of drawing from the theory of tenure all those deductions, but those only, which profited the central power. Indeed, the social and legal growth of feudalism went in England much farther than it did abroad; for it

(δ) *Completion of the manorial system.*

Inhabitants of a manor: the villeins,

the freeholders.



socagers, the latter being bound to make certain payments, or to perform services sometimes little less onerous than those of villeins. Mr. Seebohm, in his recent book on the "English Village Community," has done good service by making us see more clearly than was possible before the nature of the common cultivation of the lands of the manor, and the way in which the demesne of the lord and the holdings of the free tenants were intermixed with those of the villeins. He has also shown that the organization of the manor is of earlier origin than we are wont to suppose. But in taking up the extreme position that all the inhabitants of what afterwards became a manor were always in a condition of more or less servile dependence on a lord, he comes into evident conflict with clearly ascertained facts. As was seen when speaking of commendation, we can distinctly trace, before and after the Conquest, the way in which free alodial holders, owning no man as their lord save the national king, sank into dependence. After the Conquest, indeed, all the inhabitants of every township are found, in some way or other, dependent upon a lord of the manor; but certainly the Conquest itself did a great deal to bring this about.

It may however be confessed that little was

needed to complete the manorial organization; the really important changes due to the Conquest were rather (1) the more or less compulsory adoption of military tenure by many of the dependent freeholders, of which something has already been said; and (2) the speedy disappearance of slavery. There had been a considerable class of *theows*, absolute slaves, treated as farm implements, and sold as chattels. But, as has been justly remarked, there was no room for the slave in the feudal theory.[1] For the feudal principle was one of reciprocal duties and rights; a class without rights it could not include. And this is probably the explanation of the fact that, much as other classes were depressed, the position of the slave manifestly improved. The English had long carried on a brisk slave trade, especially with Ireland—a trade resulting in iniquities such as we are wont to think peculiar to more modern times. All that previous kings had done was to prohibit the sale of slaves to heathens; the Conqueror, influenced by the higher morality which accompanied the Church revival of his time, forbade it altogether; and his legislation was assisted by the preaching of S. Wulfstan, and the decree of Anselm's Synod at Westminster. Henceforth a lord would find it

Changes in the manor due to the Conquest: as to freeholders,

as to slaves.

Slavery and feudalism.

[1] Freeman, "Norman Conquest," v. 480.

more to his interest to settle such slaves as were not needed in the household on plots of ground taken from the "waste." The universal tendency towards making services fixed and definite would lead to the limitation and enrolment even of the work expected from a slave. These labour-dues would come to be regarded as the condition on which such a man held his land; so that, after a time, his position would only differ from that of the villeins proper in the more onerous nature of his services. The unreal distinction of the lawyers between *villeins in gross* and *villeins regardant*—the former defined as mere chattels, the latter as unfree only in certain respects and in relation to their lords—may be due to a vague recollection that among villeins were comprised slaves who had risen as well as freemen who had fallen.

Villeins in gross and regardant.

Manorial courts:

In the manorial courts no very distinct change can be attributed to the Conquest, save the introduction of new names for old institutions. Thus, distinctions are soon drawn between three "courts of the manor," and different functions attributed to them. The *court-baron*, the court of the "barons" in the old sense of freemen, doubtless represents the old township moot. The lord nominates or confirms the reeve, and receives the profits of jurisdiction, but does not

(1) *the court-baron,*

interfere with the customary procedure. Here, as in all the national courts, "the suitors are the judges," *i.e.* all those who are present at, or "do suit at," the court, join in giving the decision. Every manor had such a court-baron; and every manor had also a *court-customary*, which dealt with matters arising out of the villein tenures, and in which the lord or his steward was judge. But, besides these, many manors had also a *court-leet*. The term *leet* everywhere implies criminal jurisdiction; and it is probable that these seigneurial courts arose out of those grants of exemption from the hundred court (the lowest national court possessing criminal jurisdiction) which were frequent in the centuries before the Conquest. These grants conferred what, from the reign of the Confessor, became known as *sac* and *soc*. And there is this negative argument for the pre-Conquest origin of the manorial court-leet, that had it been introduced from Normandy, or had it grown up after the Norman invasion, it would certainly have taken the shape of a court for a whole barony, or group of manors, rather than that of a court for a single manor. For it is a singular characteristic of English seigneurial courts, that, except in the case of *honours*, they are always only manorial courts. Even when a lord possessed several adjacent

(2) *the court-customary*

(3) *the court-leet.*

English seigneurial courts manorial courts only.

manors, and held one court day for all of them, it was regarded as but a junction of many separate courts which chanced to be held at the same time and place, and not as the court of a whole barony.

Liberties. More dangerous than these to the unity of the state were the courts of the great *liberties* or *honours*. These seem to have originated in grants which, before the Conquest, had placed many hundred-courts in dependence upon some neighbouring magnate, some *land-rica* who had been made the king's representative over a wide district. Such grants would, at first, produce no change in the tenure of the other landowners of the district, many doubtless themselves lords of dependent townships; the only alteration being that the bailiff, who presided over the suitors at the hundred-court, was nominated by this great neighbour, who also got a share of the fines. But the troubles of the Danish invasions would tighten the bond between such a magnate and the inhabitants of various ranks who were subject to his jurisdiction; and the Conquest completed the process. For the new Norman lord could not understand how a man could do service in his court without holding his land of him. Without intending injustice, he would treat all the landowners of the hundred, or larger terri-

tory, as his vassals. In a case like this we have the nearest approach in England to a baronial court of the continental type.

II. Such are some of the main features of the social organization which resulted from the introduction of feudal tenures. It must have been apparent that such an organization could not have been without important results in the sphere of government. And indeed the constitutional changes were numerous and far-reaching, —in the position of the king, in the constitution of the national assembly, in the organization of justice, and in the method of taxation. *II. Constitutional changes due to feudal tenures.*

To the king it meant the addition of the character and power of a *suzerain*, or feudal over-lord, to the character and power of a *sovereign*, or national leader and magistrate. We have seen how much more effective the military force was made by the imposition of feudal responsibilities upon landholders; and this is only a particular instance of a general truth. Compare, for instance, the relations of great ealdormen and thegns with the Confessor, and those of earls and barons with the Norman king. Between the Saxon king and the great noble there was no other tie than the almost nominal bond of thegnhood; a turbulent or traitorous magnate would need to be tried before (a) *In the royal power* (1) *over vassals,*

the Witan, and the Witan would probably acquit him. But William, as suzerain, would have much less difficulty in gaining the acquiescence of a court of peers to the forfeiture of the estates of a tenant-in-chief for breach of his feudal obligation. Not that the mere change in tenure gave the king this greater power. Had there been no increase of strength owing to other causes, the altered tenure would rather have brought weakness. But the point to be noticed is this, that the feudal theory gave the suzerain a right to punish disobedience at his discretion —a right which was intelligible and generally recognized, and which there was a uniform and simple means of enforcing; and that such a right was a weapon of tremendous efficacy in the hands of a strong king.

(2) *over towns,*

It might be urged that in relation to his thegns the king had, before the Conquest, taken up much the same position, though with less power, as a suzerain after the Conquest. But at any rate, with regard to the towns and with regard to the folk-land, he had occupied no other position than that of national king; and yet here the consequences of the new doctrine of tenure are also strongly marked. Some of the towns had doubtless grown up on the lands of lords; others, arising independently, had been subjected

by royal grant to the jurisdiction of powerful neighbours. But since in the minds of the new lords jurisdiction and land-tenure were inseparably connected, after the Conquest all towns soon came to be regarded as on the demesne of him who had the jurisdiction, and their inhabitants were conceived of as holding from him by a tenure (*burgage*) similar to socage. Most English towns, however, had remained independent of any private lord, and subject to the jurisdiction of the national courts alone. But, as early as the beginning of the tenth century, such courts were considered royal courts, and the king was held to be the fountain of the justice administered in them. And thus because the king had the jurisdiction, and, in feudal phrase, there could be "no land without a lord," these towns, including the most important in the kingdom, were treated as part of the royal demesne.

(3) *over folk-land.*

Folk-land was peculiar to England, and absent in other Teutonic states. From this national reserve of land grants could be made by the king, but only with the consent of the Witan. Such part of the land, however, as was not given in grant did not remain entirely unoccupied. Tenants were allowed to settle upon it, and over these the king was recognized as having a special jurisdiction. The folk-land tended, indeed, from

the first to become the private property of the king. After the eighth century the consent of the Witan to grants from it is scarcely more than nominal. And, therefore, the change was insensible when, after the Conquest, the folk-land shared the lot of the towns for exactly the same reasons, and was swallowed up in the royal demesne. How important this was in the matter of taxation we shall see later.

(β) *In the theory of monarchy.* Lastly, feudal ideas caused important modifications in the very theory of the kingly dignity. As all land was held of the king, it was natural to regard him as standing in much the same relation to his country as a lord to his estate. The royal position began to be regarded as a possession rather than an office — a contrast marked by the use of the term King *of England*, instead of King *of the English*.[1] In consequence, it was soon thought that the same rules applied to the succession to the throne as to the succession to a private estate, viz. hereditary succession, and in default of heirs bequest or adoption. This had long been accepted as law in Normandy. But William, anxious to make no break in the external regularity of English tradition, was careful to recognize the old

Rules of succession.

[1] For the transition from "tribal" to "territorial" sovereignty, see Maine, "Ancient Law," 106.

English right of election, and his own personal preference for Rufus prevented him from putting forward his eldest son as his due successor. The ambition of Henry and Stephen, and the death of the Etheling William, still further delayed the recognition of the feudal rule as applicable to the crown. Yet it is seen gradually forcing its way. For instance, a contemporary chronicler speaks of Stephen's seizure of the throne as "alike against human and divine law—divine because he broke his oath, human because he was not the legitimate heir;" although the claim of a woman, Matilda, was almost equally discordant with feudal feeling, and Henry II. showed that he recognized this by getting himself appointed heir by Stephen. The form of election and national acceptance still remained, and with it its corollary, the principle of the right of deposition; but by its side appeared a new doctrine of far greater strength and influence, that of hereditary right.

(γ) *In the national assembly,*

A similar substitution of the new for the old principle is seen in the national assembly. It had been the Gemot of the Witan, the assembly of the wise—of those to whom wisdom was ascribed in virtue of their offices as ealdormen, bishops, or *ministri*. But England after the Conquest appears rather as an estate divided

among tenants-in-chief than as a nation with officials. And for such a state the national assembly is naturally one, not of great officials, but of tenants-in-chief, sitting in virtue of their tenure-in-chief. There is no violent break in continuity; the more important persons in the kingdom are still summoned, but these now hold their estates directly of the king, and the idea common to all feudal states at once appears that the qualification for membership is that a man should be directly holding of the king. This was the theory as late as Magna Carta, the only noticeable modification being that a distinction has arisen between the "greater barons" and all the others "who hold of us in chief," the former receiving a personal summons, the latter summoned generally through the sheriff. The adoption of the feudal theory affected even the clerical members, although the same number continued to be summoned. The lands of bishops and abbots came to be looked upon as holdings *in capite* of the king, and an article of the Constitutions of Clarendon laid it down that they were to be held "as a barony." To the old character of the bishops and abbots as Witan, was now added the character of great tenants-in-chief, or barons; though it does not follow that the earlier qualifi-

which becomes one of tenants-in-chief;

cation disappeared, and that they were deemed to sit in the assembly *only* as barons. Indeed, their very presence was probably due to the fact that William wished to maintain, as far as was convenient to him, the old form of the Witenagemot; for in Normandy the bishops are said to have been excluded from the Great Council altogether.[1] This indication that William's policy was to give to these assemblies the character of Witenagemots and of feudal courts at the same time, throws some light on a question which has been vehemently disputed —as to the power which the national assembly possessed in the Norman period. Gneist has argued that the gathering was merely for court display; that its consent should be regarded as necessary in taxation and legislation is, according to that writer, to antedate later ideas.[2] But it is certain (1) that the Witan did in theory possess such a right of sanction; (2) that contemporary observers did not think that the old institution was abolished and a new one created; (3) that the English Chronicle continues to speak of the assembly by the old name, and that the equivalent *sapientes* is used by Latin writers far into the twelfth century. And when

but retains in theory its old powers.

[1] Freeman, "Norman Conquest," iii. 290.

[2] "History of the English Constitution," i. 247, 250 *n.*

we find that William thinks it expedient to say that he legislates *with the common council and consent* of the magnates, and Henry I. to state that an aid was *given* him by the barons. we can hardly doubt that the old theory of the power of the national assembly was retained and recognized. On the other hand, it is equally clear that the mention of counsel and consent was as yet but a form, and that in matters of legislation and taxation the Norman kings were practically absolute.

(δ *In judicature,*

The growth of the administrative system will be traced in the essay which follows. The early history of the central judicial and administrative machinery, of what was subsequently the *Curia Regis* and *Exchequer*, is extremely obscure; it is, however, clear that its development was hastened after the Conquest by the new needs of government. As early as the time of Ethelred II. it had been enacted that a king's thegn should be subject only to the *soc* or jurisdiction of the king himself; though this may only imply that the king was to receive the fines arising from such cases. A *theningmannagemot*, a court of thegns, is, indeed, once mentioned in the reign of Edgar as that before which an important suit was brought, but the sequel of the story shows that the shire-moot could insist on having even

weighty matters submitted to it in the first instance. Yet the mere appearance of a special court of thegns is in itself significant, and marks the strong tendency in England towards institutions like those of the continent. After the Conquest and the change of tenures, the creation of a feudal court for tenants-in-chief became necessary. For in all feudal societies the principle is asserted that a man ought to be tried by his *peers, i.e.* by those who hold in the same way of the same lord. The immediate lord has the jurisdiction; that is, the courts are held in his name; he or his representative presides, and to him go the profits of justice; but the judges must be the other tenants of the same fief. Thirty years before the battle of Hastings, the Emperor Conrad II. had given express recognition, in the famous Edict of Milan, to the principle that no man should be deprived of his fief but by the judgment of his peers.[1] The claim rested on a just consideration—that, as most suits arose out of land, men were not so likely to receive fair treatment from those of whom they held, or who held of them and of their equals, as from men who were in exactly the same position as to tenure. In England the principle quickly received the stamp

owing to the principle of trial by peers.

[1] Hallam, "Middle Ages," i. 166.

of law. In the so-called "laws of Henry I." it is laid down that no one shall judge his lord, or pass judgment upon him whose liegeman he is. Probably the county court, as Gneist suggests, would continue to be resorted to for petty criminal matters; for, of the four or five hundred tenants-in-chief, there would surely be enough in each shire to furnish the sheriff with a jury of *pares*. But land was the chief subject of litigation, and Henry I. expressly enacted, in an order issued early in his reign, that "when henceforth a plea arises concerning the division of lands, if it is between barons holding of me in chief (*inter barones meos dominicos*) it shall be tried in my court, and if it is between the tenants of two lords it shall be tried in the county court." This proves, at any rate, the existence of a court for the trial of suits between tenants-in-chief. As to the composition of this court, controversy is still busy. Gneist proves, what needs no proof, that there was no recognized body of great vassals which could act as a feudal court of peers; and he argues that whenever a case was excepted from the jurisdiction of the county court it was tried by special commissions appointed by the king, and really acting in virtue of the king's absolute authority,

Composition of the Curia.

though they might nominally be peers of the parties engaged.[1] On the other hand, in one great case, that of the Bishop of Durham, in 1088, it is clear that all the magnates were present, as at a national assembly; and sentence was pronounced in the name of "the court of the king and these barons." All that can be said with certainty is, that in the reign of Henry I. the Curia Regis does become distinct from the Common Council of the realm, and consists of officials. Perhaps in the two previous reigns there was a difference in fact between the small body of officials who would act in ordinary cases, and the whole assembly of tenants-in-chief, who might come together for judicial purposes when the business was important; but probably this difference in fact had not yet translated itself into theory. Whatever else the court may have been, and however it may have been constituted, it was, evidently enough, a *feudal* court of *peers*, meeting needs arising from the introduction of novel ideas; and that such needs had to be met, must be reckoned one at least among the causes which led to the appearance of the Curia Regis as a separate body and to its rapid growth in importance.

[1] i. 257–261 (Eng. trans.).

(ε) *In finance.*

The other branch of the central administration, known later as the Exchequer, was, we can hardly doubt, somewhat similarly influenced by the results of feudal tenure, in that the development of the financial office, which was certainly of much earlier origin than the Conquest, was hastened by the new duties thrown upon it. For the influence of the change on the amount and character of the royal revenue is especially noticeable.

Two of the new sources of revenue have been already mentioned,—the "incidents" of feudal tenure, bringing the king money in the shape of reliefs and payments for wardship and marriage; and "scutage," the commutation for military service introduced by Henry II. Two others have to be noticed—*aids* and *tallage*. The right of demanding aids arose from the close tie, as between man and man, which the relation of lord and vassal implied and the words of homage expressed. In natural agreement with such an idea, the lord could call upon his vassal to assist him with money on emergencies, although the vassal was understood to be free from taxation as a rule, because he defended his lord with his body. These emergencies soon became limited to three—the ransoming of the lord from captivity, the knighting of his

Aids.

eldest son, and the marriage of his eldest daughter—each needing an amount of money such as was not usually at the disposal of a feudal lord. The same claim as was made by the king upon his tenants was made by the barons upon their tenants; and Magna Carta, by the clause forbidding the king to permit lords to take from their tenants other than the three customary aids, recognizes their right to take these. The word "aid" came, however, to be extended to most other imposts, though the word itself had at first implied a free assistance. Hence it became necessary to lay down in Magna Carta that aids, on other than the three above-mentioned occasions, should not be imposed save by the Common Council of the realm.

Tallage, a tax which originated under the Norman kings, though it is not given the name till the reign of Henry II., may similarly be regarded as a result of the feudal theory. It was an impost levied at the king's pleasure upon the royal demesne, including, as has been pointed out, after the Conquest, most of the towns in the kingdom. Probably the theory on which it was justified was this—that as military service was the burden of a special class, of those holding in chivalry, it was equitable that those

Tallage.

who were exempted from this duty, the socage and burgage holders, should contribute by taxation to the national defence. The barons claimed an equal right of tallaging their own demesnes; and it was not without a struggle that the Exchequer succeeded in establishing the principle that all such seigneurial tallages needed royal consent. As late as 1305 Edward I. granted leave to the barons to tallage their lands as he had tallaged his. The *towns*, however, on baronial demesnes had long succeeded in buying exemption; and the royal right itself disappeared after the statute of 1340. Tallage in England was never so important as its parallel, the *taille*, in France, and this for two reasons: first because the maintenance of the national militia took away the excuse for demanding money for national defence; and secondly, because it proved to be the king's interest not to tallage the towns heavily, in order to induce them to increase the annual payments known as the borough *ferms*.[1]

III. Certain possible feudal evils prevented by the Norman kings.

III. We now turn to consider the question wherein and why England continued to differ from a completely feudalized state such as France; to notice the dangers to which it was subject, and the means by which these dangers

[1] Gneist, i. 211 *n.*

were escaped. The tendencies of a feudal state may be described in two phrases: on the side of the king, *sovereignty tended to disappear in suzerainty;* on the side of the vassals, *ownership tended to become sovereignty.* The great tenants-in-chief, and smaller sub-tenants when the immediate lord was weak, might, and in France and Germany did, succeed in becoming practically independent of any external control. The king's authority as national sovereign was lost, and its place taken by narrowly defined rights over those immediately holding of him. But we must be careful to avoid exaggerations. As Palgrave has said, "there was no government in mediæval Europe founded on feudality," in the sense of accepting as a principle this limitation of royal power to an over-lord's rights over his vassals. It has recently been shown that even by the early Capetian kings such a limitation was neither recognized in principle nor conformed to in practice.[1] Yet such was in the main, and over a great part of western Europe, the result of the forces at work; and such results might seem especially probable in England. For England was a country conquered by men penetrated with feudal ideas.

[1] Luchaire, "Histoire des Institutions Monarchiques de la France," l. i. ch. i.

The new king appeared to depend on his victorious army for the retention of his prize; and everywhere else the existence of a large conquered population had stimulated the growth of baronial independence. To understand why this did not occur in England it is necessary to realize, before everything else, the position assumed by William and his successors. The Conqueror, throughout his reign, posed as the lawful heir of the Confessor. The battle of Hastings and the ravagings of north and west were, in this view, but unfortunate episodes which did not prevent the king, who had been elected in due form by the Witan, and crowned by an English primate, from ruling as English kings before him, with unaltered authority. The policy of William was evidently this,—to use all the power which could be derived from the feudal relation, but at the same time to add to it all the power of the English monarchs. Many an old institution which a despot with a free hand would never have devised, he found it useful to maintain as weapons against feudalism.

Danger lest tenants should adhere to their lords against the king.

The first and greatest danger was lest it should be believed that the tenant was bound to his immediate lord even against the king. This did become the doctrine in France and Germany, and from it the deduction even was

drawn that, while the vassal who had waged war on his lord was worthy of forfeiture, his tenants, who had but obeyed his summons, were innocent and ought not to be punished. Thus the *Établissements* of S. Louis, which were designed to extend the royal power, though they lay down that a tenant is not bound to serve his lord against the king if the king will do the lord justice, yet declare that "if the *chef seigneur* persist in his refusal to do justice, the vassal ought either to follow his lord, or resolve to lose his fief."[1] For here the idea of *personal* relation and duty predominated: a personal tie bound the tenant to his lord; there was no such bond between this tenant and the king. This relation was created by the act of homage and oath of fealty; so that, to take another instance from the reign of S. Louis, when that king was going on crusade, Joinville refused to join the barons in taking an oath of faith and loyalty to the king's children, on the express ground that he was not the king's man, but the man of the Count of Champagne.[2] He was not willing to incur obligations which might conflict with his first duty, fidelity to his immediate lord.

[1] Hallam, "Middle Ages," i. 168 *n.*
[2] "Mémoires" (ed. Michel), 37.

Oath of Salisbury.

Facts such as these make us understand the significance of William's action at the assembly of Salisbury in 1086. The Domesday Survey had just been completed ;. henceforth the king could learn with certainty who were in possession of the soil. His next act was to make the holders recognize that, whoever might be their immediate lord, their duty to the king was paramount to their duty to their seigneur. William wished to make it clear that he was not a mere feudal suzerain, and, as such, only in distant relation to the mass of the people; but that he was also the sovereign of the nation, and claimed obedience from every member of the nation. And so "he ordered," says Florence of Worcester, "that archbishops, bishops, abbots, earls, barons, sheriffs, *with their vassals* (*cum suis militibus*), should meet him at Salisbury; and when they had come together he compelled *their vassals* to swear *fealty to him against all men.*" Contemporary writers plainly intend to show that the oath was understood to be one binding them to the king even against their immediate lords. The English chronicler puts it in this way: "There came to him his Witan, and all the landowning men there were, over all England, *whose soever men they were*, and all bowed down to him and became *his* men, and swore

oaths of fealty to him, that they would be faithful to him *against all other men.*"

A similar attempt to stem the tide of feudalism has been made by Charles the Great; and many a king had tried to get a clause inserted in the formulas of homage and fealty which should reserve the vassal's duty to his sovereign. But efforts to preserve the reality of national sovereignty had failed on the continent; and this oath at Salisbury, important as it is as a declaration of principle, would have been worthless had not the king possessed means of enforcing its fulfilment. No number of oaths could long prevent the vassals of a great lord with absolute authority in his own district from choosing rather to follow their lord against the king than lose their fiefs. What, then, were the devices of the Norman monarchs, what the circumstances assisting them, which so limited the power of local magnates that their vassals could dare to be true to the king?

Means by which this evil was prevented.

(1) *Maintenance of the fyrd.*

In the first place, William and his successors were able to have recourse to a military force other than the feudal levy, namely, the old national militia, or *fyrd*. The most important of the three duties binding on every freeman had been attendance in the national host. William was not slow to see the expediency of keeping men aware that they remained under the same

Instances of its use.

obligation. Two years after Hastings, the men of the already conquered districts had obeyed his summons, and had even joined in the attack upon their countrymen of Exeter. And men did not venture to resist even when the true character of the fyrd, national defence, was disregarded, and it was used for foreign warfare. In 1073, when William's first conquest, Maine, seemed slipping from him, an English army took the chief part in the campaign which ended in its subjugation; and in 1094, ten thousand footmen came together at the royal summons at Hastings, though only to be robbed of their road-money by Flambard, and sent home again. Far more important, however, are the instances of the use, and successful use, of the national militia against the forces of feudal anarchy; for they show that, in spite of the severities of the new government, the great body of the conquered English quickly learnt where their interest lay; better for them that the king should succeed than the barons; better one tyrant than many. After the Conqueror's death, the barons twice endeavoured to place Robert on the throne in the place of his sterner brothers. For the weak administration of that prince in Normandy assured them that he would hold the reins laxly in England. The first of these attempts fol-

lowed the coronation of William II.; it was joined in by the foremost "French" magnates in England—Robert of Mortain, Robert of Mowbray, Robert of Belesme, Eustace of Boulogne, the Bishops of Bayeux and Coutances. Then William, "seeing that almost all the Normans had conspired against him, summoned the English," winning them by promises of good government. With English help he took castle after castle, drove back the fleet which Robert, like a new Conquerer, had sent to Pevensey, and finally captured Rochester, Odo's stronghold. "Many Frenchmen forlet their lands and went over sea," says the chronicler briefly of the consequences, "and the king gave their lands to the men who were faithful to him." *In* 1087.

In 1101, the struggle seemed likely to be repeated, this time between Henry and Robert; "but all the English, knowing nothing of the rights of any other prince, remained firm in fidelity to their king," and Robert did not venture on a battle. The failure of Robert brought with it the punishment of his greatest supporter. Robert of Belesme was the leader, and worst example of the lawless, self-seeking baronial party. Son of Roger of Montgomery, one of the chief followers of the Conqueror, he had become Count of Ponthieu and Alençon in *Fall of Robert of Belesme.*

even the anarchy of Stephen's reign could break it down. Henry II. was the most powerful king in Europe, not so much from the extent of his dominions, as from the order in which he kept them. Even the weak Henry III., when backed by the forces of administrative tradition, was formidable enough to task the whole energy of the nation in his repression.

Strength of the English administrative system.

What then was the system which rendered the English monarchy so strong, in the days when other states were suffering from the worst evils of feudal anarchy? It was a system the essential principles of which lay in the complete subordination of all the branches of the administration to the royal power, and in the ease and certainty with which that power could make itself felt throughout the land. It reduced the dangers of feudalism to a minimum, by vigorously enforcing the direct jurisdiction and authority of the sovereign over all his subjects, great and small. It drew into the exchequer all the proceeds of feudal dues and incidents; but it secured, by means of a separate scheme of national taxation, that the king should never be entirely dependent on his feudal revenues. It retained the power of calling feudal levies into the field whenever it might be necessary; but it relied also on a

national militia, raised by the king's own officers, and drawn from the whole body of freemen. By rendering the king independent of the support of his baronage both in military and fiscal matters, it took away the two great levers by which the forces of feudalism could hope to overturn his throne. Consequently it required something more than a revolt of the tenants-in-chief to curb the tyranny of a John or end the misgovernment of a Henry III. To prevail over the royal power, the baronage had to ally itself with the nation; and when Magna Carta was exacted and confirmed, it was not feudalism which profited. There resulted from the victory not a relapse into anarchy, but the establishment of a new form of constitution, in which neither the king nor the baronage held undisputed sway. From the reign of Edward I. onward, the Commons no less than the sovereign and the greater nobility, have an appreciable influence on the conduct of affairs.

Let us now turn to the details of this administrative system, which made the King of England master in his own land, after a manner of which continental rulers could have no conception.

The Great Council.

As the supreme legislative and judicial body in the realm, we have the King's Great Council, which carries on in a measure the traditions of

practice of subinfeudation had become general, was this—that, in cases of appeal for refusal of right or false judgment, the royal court could not be reached until the suitor had appealed to several intermediate lords. The king's authority to do right and redress wrong to every subject became a mere fiction; the only alternatives were the undue power of the lord of a village, or the undue power of his superior, the lord of a county.

The growth of such a state of things was prevented in England in two ways; first, by the retention of the popular courts, and secondly, by the creation of a central judicial system, to which the Norman and Plantagenet kings were strong enough to enforce obedience. First, as to the popular courts. William was too much of a statesman not to see that in the organization of the local assemblies of shire and hundred lay the peculiar strength of the English constitution. Were it only for his immediate and personal purpose of appearing the lawful successor of the earlier kings, he must refrain from interfering with such a system. But he did more than abstain from innovation; he took care that the local courts should be maintained. For, national courts such as these, administering royal justice and presided over by royal officials, the sheriffs, could do more than anything else to

keep alive the belief that justice was a national right and not a seigneurial perquisite. In a document which "contains, probably, the sum of the Conqueror's legal enactments," appears the clause, "Let the hundred and county court be maintained as our predecessors decreed;" and, for each of the Norman reigns, records remain of the trial of important suits in the shire and hundred moots. Henry I., in a charter which was intended to put an end to certain abuses of the sheriff's power in the matter of these assemblies, ordered that henceforth his county and hundred courts should meet at the same times and places as in the reign of King Edward. A distinction was indeed growing up between the lesser court of the hundred, held monthly under the sheriff, and the great court of the hundred, the *tourn and leet* held by the sheriff twice a year, especially for the *view of frank-pledge*—a sort of village registration for police purposes. And other changes appeared, such as the introduction of trial by battle, and the limitation of the right of joining in judgment to "barons," *i.e.* freeholders, having lands in the county. But the really important points are that the courts are maintained, that at the great hundred court all owners of land—bishops, earls, barons, vavassors, and a long list of other

lords and their representatives—are still expected to be present, and that it is still held, according to the "laws of Henry I.," that it is the duty of a lord to there present his accused "man."

(3) *Creation of a royal judicial machinery.* The other weapon of the sovereign against the lords was the Curia Regis. This is a subject which will more fitly be dealt with in the following essay; but it may be well to mention in this place some of the methods by which the judicial authority of the king was enlarged. First was the increase of the number of criminal offences treated as matters reserved to the crown. Such cases would doubtless be tried in the national courts, and taken out of the hands of the manorial lords. Another plan was the frequent issue of writs, rarely employed before the Conquest. These were sent through the sheriffs to the lords of manors, especially upon matters concerning land, admonishing them to do justice, and adding, "unless you do so, the sheriff will do it, that we may no longer hear complaint of failure of justice." And finally, with the reign of Henry I. begins the despatch of itinerant justices through the counties to hold civil and criminal pleas.

Yet great dangers long remained. Several of the more powerful lords had *liberties* or *honours*,

in which all the courts were subject to them, and from which in some cases even the sheriff was excluded until the Assize of Clarendon. Every lord of a manor who had only a court-baron coveted a court-leet and power of criminal jurisdiction, like the French *haute justice* with its scaffold. And when the strong hand of the king was removed, the anarchy of Stephen's reign showed what the Norman conquest would have made England but for William's policy. Among the results of that policy may be placed these three facts: that the seigneurial courts remained merely courts of manors, and did not become courts of whole baronies; that no gradation of feudal courts arose as in France; and that the right of appeal directly to the king was recognized from the first. The final end of the struggle to limit seigneurial power may be seen in two statutes of the reign of Henry III., the statute of Merton, forbidding magnates to have their own prisons, and the statute of Marlborough, enacting that "no one for the future, except our lord the king, shall hold a plea in his court for false judgment *in a court of his tenant*, since pleas of this kind specially pertain to the crown."[1]

Results in judicature of the Conqueror's policy.

[1] Compare with the notices of the subject in Stubbs's "Const. Hist.," ch. xi. of the first vol. of Gneist, "Hist. of the Engl. Const." (Engl. trans.).

Three particular evils.

(1) *Private warfare.*

The baronial right of private warfare was never recognized in England. It implied that there was no superior strong enough to compel recourse to his tribunal; and weakness such as this no English king was ever obliged to confess. In France, on the other hand, the right of a baron to prosecute a quarrel by arms was repeatedly acknowledged by the king. All that could be done was to lessen its evils, as by those edicts in the thirteenth century which provided that hostilities should not begin till after an interval of forty days from the offence, nor while the king himself was at war with a foreign enemy. But in England private war was always a "crime" and an "unusual crime," as the historian says of Ivo of Grantmesnil, who was expelled from England in 1102, and who had tried to set the evil example. During two periods only in our history was private warfare at all frequent—in the reign of Stephen, and in the reigns of Henry VI. and Edward IV. The evils of the former time were repressed by the strong hand of Henry II.; those of the latter called for the rule of the Tudors.

(2) *Private castles.*

One main reason, certainly, why England was unlike France in this respect was the firm hold which the sovereigns managed to retain over baronial castles. In Normandy, the dukes had

kept the right of garrisoning such strongholds; in England a licence from the king was held necessary, and *castellatio sine licentia* appears in the "laws of Henry I." as an offence which put a man "at the king's mercy." Stone castles, indeed, had never been built in England before the Conquest; and of the forty-nine which appear in Domesday, thirty were in the king's hands. The worst feature in the lawlessness of Stephen's reign was the building of hundreds of castles by barons of the king's party with his permission, and soon by every baron who was able to do so. In these castles were wrought the worst of those iniquities which made men say that Christ and His saints slept. "All became forsworn and broke their allegiance," cries the English chronicler; "for every rich man built his castles and defended them against the king, and they filled the land with castles. They greatly oppressed the wretched people by making them work at these castles, and when the castles were finished they filled them with devils and evil men." Among the conditions of the treaty of Wallingford was the destruction of such *adulterine*, or unlicensed, castles; and Henry carried out his purpose at the beginning of his reign, in spite of a vigorous opposition which forced him to lay siege to several of the fortresses. Such as were

allowed to remain were either garrisoned by the king, or put under castellans approved by him.

(3) *Private coinage.* As to the right of coinage but little need be said. It was generally and rightly regarded as a most essential prerogative of sovereignty, and it was one of the rights which every king, as soon as he was able, reserved to himself. But while the French monarchs did not succeed in this until the end of the fifteenth century,—so that, for instance, in the reign of Louis IX. there were as many as eighty lords who struck coin for their own territories,—in England, except in Stephen's reign, the royal monopoly was never attacked. Under Stephen, baronial mints appeared, with all the other feudal abuses. "There were as many kings, tyrants rather, as there were lords of castles," says a contemporary writer; "each had the power of striking his own coin, and of exercising, like a king, sovereign jurisdiction over his dependents." Coins remain which were issued by Henry the great bishop of Winchester, and by Robert of Gloucester. But Henry II., in the treaty of Wallingford, insisted on the removal of adulterine coinage as well as adulterine castles, and from his reign England has possessed a uniform royal currency.

Dangers peculiar to England. So far the dangers we have been enumerating were dangers which attended feudal tenure in

all countries. But the hardest part of William's task lay in overcoming dangers peculiar to England. England before the Conquest seemed on the point of splitting up into three or four semi-independent principalities. This was an evil which had been growing for two centuries; for scarcely had the early separate kingdoms disappeared, before the old provincial feeling and the weakness of the central authority led to the creation of great ealdormanries. These ealdormanries, known later as earldoms, comprised several counties; and around the families which gained hereditary possession of them, all the old feelings of local patriotism and provincial independence speedily revived.[1] The disasters of Ethelred II. were due largely to his untimely attempts to overthrow these too powerful magistrates. Canute, on the contrary, taking up rather an imperial than a national position, accepted the fact of provincial separateness, and perhaps thought that disunion would make it more easy to rule. At any rate, during his reign England was divided into four great earldoms—Northumbria, Mercia, Wessex, and East Anglia. Three great princely houses arise whose struggles make up the history of the Confessor's reign—that of

The great earldoms.

[1] Compare Green, "Conquest of England," p. 304; and map of "England under the Ealdormen," p. 316

Siward in Northumbria, of Leofric in Mercia, of Godwine in Wessex. East Anglia is tossed from side to side, held now by a son of Leofric, now by a son of Godwine, with the shifting fortunes of the rival families.

William's action as to these.

It was, therefore, a question of the gravest moment what action William should take in the matter of the ealdormanries. If, relying on his power to make the earls his servants, he continued the old system of dividing the country into three or four provinces, it was likely that the Norman magnates who thus gained over many shires the power of ealdormen in moot and fyrd would succeed in creating hereditary principalities. But William proceeded very cautiously. An earl, Ralph Guader, was appointed in East Anglia, and no change was at first made in the character of the office. But to none of his followers would he entrust the earldom of the whole either of Mercia or Northumbria. Mercia was divided between Hugh of Avranches, as Earl of Chester, Roger of Montgomery, as Earl of Shrewsbury, and Roger of Breteuil, as Earl of Hereford; Northumbria was partitioned between Alberic, Earl of Northumberland, and the Bishop of Durham; Wessex he kept in his own hands. This explains the significance of the conspiracy of the earls in 1075. Two of

The conspiracy of 1075.

the men just mentioned—Ralph Guader, whose earldom of East Anglia had always been inferior to the other three provinces, and was getting narrowed to Norfolk; and Roger of Breteuil, who would fain turn his earldom of Hereford into an earldom of Mercia—communicated their plans to Waltheof, whose name, as son of Siward, would they thought win them popular support. "Let us," they proposed, "restore England to the condition in which it was in the time of that most pious King Edward; let one of us be king, the other two dukes, and so let us share all authority in England between us." But the revolt was soon suppressed, with the aid of the bishops and of the English, who thus early saw that in the undivided authority of a single ruler lay the only hope of good government. If William needed to be taught the dangers of government through earls, this experience was a sufficient lesson. Henceforth the earldoms become merely titular dignities; the earls cease to have any connection with the shires from which they are named; they no longer command the host of the county, or preside in its court. Stephen's creation of merely nominal earls, supported by Exchequer pensions, completed the change; and in later reigns it was not from the jurisdiction

leaves him alone in the shire-moot. Not that this arrangement was entirely free from risk; in some cases the office of sheriff became hereditary, and when to this was added the possession of great estates in the county, a power grew up dangerous to the state; but this belongs to a later period. That the sheriffs were believed to help in the maintenance of good order is shown by the fact that their restoration was one of the terms of the peace of Wallingford.

The palatine earldoms.

To such a policy the creation of palatine earldoms was an exception for the sake of the national defence — Chester and Shrewsbury against the Welsh, Durham against the Scotch, and Kent against France. But the palatine earldom of Kent disappears with the fall of Odo; and the banishment of Robert of Belesme put an end to that of Shrewsbury. In Durham the bishop, in Chester the earl, were the lords of all the lands in the county, issued writs, and held baronial courts. These made the nearest approach to the position of a great continental feudatory, and even of these one was a churchman who could not found a family.

Summary.

We can now answer the question with which we set out. The Norman Conquest did make England a feudal state in the sense of in-

troducing feudal tenure with many of its consequences; it did not make it a feudal state in the sense of making its government feudal. We have seen how William prevented what might have been the worst results of the Conquest. But without the Conquest England would inevitably have fallen asunder into a number of principalities, and union would have been harder to secure even than in France. From such a fate the strong hand of William saved this country. The old Saxon princely houses were destroyed, and no Frenchmen were allowed to take their places. An alliance with the Church and the support of the English enabled the Norman kings to establish and maintain their authority.

How far the result was due to policy.

Their success must not be wholly ascribed to politic measures; it must not be forgotten that the England they had to rule was but a third of the size of France, and that its population was far more homogeneous; therefore the distance over which royal authority had to be exercised was less, and provincial feeling was weaker. But much we must attribute to conscious policy. The maintenance of the old theory of sovereignty, the retention of the old national courts and array, gave the king weapons of which we can trace the use. And, as the result, "a power-

ful and well-served monarchy, and a baronage relatively feeble, were the two important characteristics which distinguished England from other European states."[1]

Future consequences.

Such a result was full of hope for the future. The overwhelming power of the king, especially after Henry II. had armed monarchy with an all-reaching administrative machinery, led to despotism, and despotism to revolt. The weakness of the barons made it alike necessary and possible for them to obtain the aid of the great body of the people in their revolt; and from this united opposition sprang the mediæval parliamentary constitution. The English parliament, again, would have been very different from what it was, had not the towns been kept from assuming an isolated position by a royal authority which would protect them from the barons; and had not national institutions, notably the county court, been retained to unite the various classes of Commons.

Royal policy and the daily life of the people.

We ask, finally, what had all this "policy" to do with the mass of the inhabitants of England, the small landholders, the socagers and villeins

[1] Cf. "Le Parlement en Angleterre," by E. Boutmy, in the *Revue des Deux Mondes*, clxxvi. 90 (1886), where an interesting contrast is drawn between England and France in the eleventh century.

and townsfolk, above whose heads it was being worked out?—for we are only too apt to think of "constitutional development," and to forget the condition of the people. What the people craved was that they might be allowed to labour in quiet, safe from the violence of the strong. Perhaps the most pathetic figures in the Middle Ages are the preachers of peace who ever and again appear, like that carpenter in Guienne in the twelfth century, with banner bearing for inscription, "O Lamb of God, grant us Thy peace;" or that monk of Vicenza in the thirteenth century, who, reminding men of the words, "Peace I leave with you," reconciled the cities and factions of Lombardy.[1] They created peace for a time, but the evils of private warfare and lawlessness quickly returned. By the *truce of God* the Church tried to do what the state had failed to do—to secure that men should feel themselves free from pillage at least for two or three days each week; and its work was almost in vain.

We owe it to the strong policy of the Norman kings that a better state of things was established in England. "Among other things is not to be forgotten the good peace he made in this

[1] Robertson, "Charles V.," Proofs, 21; Symonds's "Renaissance," i. 551.

land," says the English chronicler of the Conqueror; of Henry I. in like manner: "No man durst misdo against another in his time. He made peace for man and beast." Orderic puts the matter simply: "The foremost counts and lords of towns and audacious tyrants he craftily overpowered; the peaceful, the religious, the mean people he at all times kindly cherished and protected. . . . He always sought peace for the nations under him, and rigidly punished with austere measures the transgressors of his laws." The reign of Stephen, when the nobles "fought among themselves with deadly hatred, and spoiled the fairest regions with fire and rapine," seemed all the darker by contrast. But with the accession of Henry II. the time of troubles was over; "peace and justice were recalled." The English had much to bear from their new masters; the pressure of government was heavy and constant; but in the maintenance of the peace of the country they found a sufficient recompense.

ESSAY III.

THE ANGLO-NORMAN AND ANGEVIN ADMINISTRATIVE SYSTEM (1100–1265).

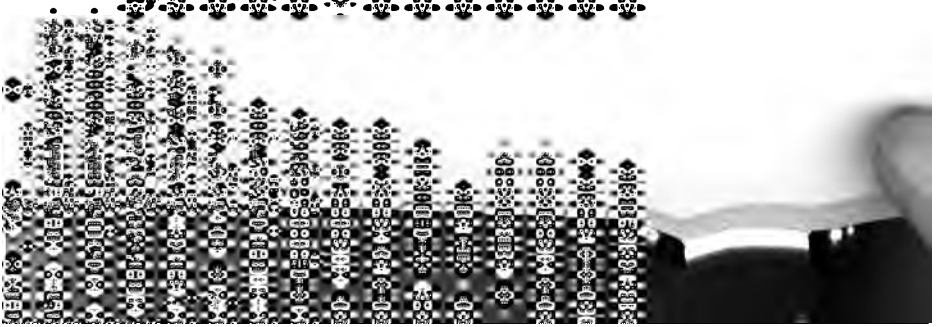
Character of the English kingship.

THE essential divergence between the history of England and that of the continental states is shown as clearly in the twelfth and thirteenth centuries as at other epochs. Beyond the Channel the danger to society lay in the predominance of feudalism, which at first seemed likely to prove fatal alike to royal power and to municipal liberty. On this side of the straits of Dover the fear was that the inordinate development of the authority of the king would reduce all the other elements of the constitution to impotence. Henry I. was obeyed with a punctuality on which no contemporary sovereign of Christendom—save John Comnenus in the far East—could reckon. So firmly had the English administrative system taken root by the middle of the twelfth century, that not

[illegible] reign could [illegible] as the most [illegible] much from [illegible] om the order [illegible] weak Henry [illegible] of administra- [illegible] ough to task [illegible] his repression. [illegible] ich rendered [illegible] in the days [illegible] om the worst [illegible] as a system [illegible] lay in the [illegible] branches of [illegible] power, and in [illegible] that power [illegible] out the land. [illegible] udalism to a [illegible] ng the direct [illegible] sovereign over [illegible]. It drew into [illegible] f feudal dues [illegible] y means of a [illegible] ation, that the [illegible] dependent on [illegible] the power of [illegible] held whenever [illegible] ied also on a

own
y of
ient
tary
reat
uld
it
the
ohn
To
had
na
not
om
the
n, in
eld
d I.
ove-
pre-
nis-
and
ich
ody
ncil,
s of

The Great Council.



the old English Witenagemot. But while the Witan had been essentially national, and had possessed in all matters a power almost co-ordinate with that of the king, the new Great Council gradually grew into a semi-feudal body of the tenants-in-chief of the crown. No violent break appears between the two institutions, because the bishops and landed magnates who would naturally have appeared at the Witenagemot were precisely the same persons as the great tenants-in-chief who came to the Great Council. The lesser tenants-in-chief, who in theory were summoned to the Great Council as much as their more important compeers, did not in reality present themselves. Thus the assembly, though gathered on a new theory, presented an appearance very similar to that of the body which it replaced. Three times a year, on the great Church festivals of Christmas, Easter, and Whitsuntide, the Anglo-Norman king summoned his Great Council around him, and "wore his crown in public" at the solemn session. His projects, legislative and financial, were laid before the assembly, and passed by its "counsel and consent;" while the more important judicial cases, which had by process of appeal come up to the highest tribunal of the realm, were tried and decided by the same body. Even greater importance attached

to the Great Council as the body which chose the king. The reigns of all the four Anglo-Norman kings opened with a disputed succession, and the successful prince in each case insisted, not on his hereditary right, but on the fact of his election. It is true that the councils which elected Henry I. and Stephen were mere shadows of the bodies which they purported to represent, hastily summoned and meagre in numbers, yet on their authority rested the claim of the newly chosen king. A ruler whose title was bound up with the rights of the assembly which had crowned him could not avoid perpetuating the elective theory of kingship—a theory which goes far towards mitigating absolutism. The French kings who for eight generations passed their crown on in hereditary succession from father to eldest son, were for the moment, indeed, powerless before their baronage; but by the undisputed transmission of the royal power for so many years they caused the fact that the French throne was elective, no less than the English, to pass into oblivion; and thus laid up for their descendants claims of divine right which could not be foisted on England.

The Curia Regis.

The Great Council could not always be in session, yet there was continually needed some

body which should exercise a general control over the administration of the realm, and take off the king's hands the details and drudgery of government. Around the person of the sovereign were grouped a body of officials and advisers (representatives of the old royal "ministri" of Anglo-Saxon charters) who fulfilled this purpose. Collectively they are known as "Curia Regis," a name which the Great Council also claimed for itself. Apparently they could be considered as a permanent committee of the larger and more authoritative body, and could therefore employ its name. But, though enjoying administrative and judicial authority, they could, of course, make no attempt to trench on the legislative power of the Great Council, or to assume its privilege of sanctioning extraordinary taxation. The members of the Curia Regis fall into two classes. The first consisted of the great officers of the royal household, whose privileges in England (just as in Germany and France) soon became hereditary. These were the constable, chamberlain, steward, marshal, and butler, whose positions descended in the families of Hereford, Oxford, Leicester, Pembroke, and Arundel. But these functionaries were by no means the most important part of the Curia. If the king had been compelled to act through

them alone, his power could never have established itself with that firmness which characterized Anglo-Norman and Angevin rule. The fact that the offices were hereditary, and their holders great nobles, would have rendered the control of the king over them almost nugatory.

The really important members of the Curia Regis were those who were purely royal nominees, appointed by the king and removable at his pleasure. These were the Justiciar, Chancellor, and Treasurer, with some other less dignified officials who bore no special title, and appear as "judices," "ministri," "barons of the exchequer," etc.

The justiciar.

The Justiciar "capitalis justitia," was in England, as in Sicily and Aragon, the second person in the realm. He was not only the head and president of the supreme legal court, as his name shows, but also a permanent prime minister, and the king's chief representative. Whenever the king was over-sea engrossed in the affairs of his broad lands in France, the justiciar was regent in England, "vicedominus totius Angliæ," and exercised the royal authority in his master's behalf. When the sovereign was at home, the justiciar, besides presiding in legal business—the amount of which was enormous in a country like England, where

the privilege of appeal to the supreme court was frequently granted—acted as the confidential minister and chief of the executive. The Anglo-Norman kings, while feudalism was still dangerous, avoided placing the justiciarship in the hands of laymen or nobles. Such officials could not have been trusted with the all-important charge. They chose for their prime ministers Churchmen, usually men of humble fortunes, whose sole claim to their position rested on royal favour. Both as ecclesiastics and as "new men" the justiciars felt no temptation to play into the hands of the baronage, and kept firm to their allegiance to the king, to whom they owed everything. William II., the most unscrupulous of men, found his fitting right-hand-man in the rapacious Ranulf Flambard. Henry I.'s reorganization of the administration was carried out by the firm hand of Roger of Salisbury. The anarchy of Stephen's reign is marked by the temporary disappearance of the office—a fit sign that the king's writ had ceased to run throughout his realm. Henry II., when feudalism had made its last struggle in vain, was able to take the new step of nominating laymen—even laymen of rank—to the justiciarship. His baronial nominees, De Lucy and Glanvil, did not belie his confidence. To the first the rapid and energetic suppression

latter
also
ional
nibus
. and
., the
erical
ician,
n the
new
pear-
rather
arks
f the
had
that
rn for
strong
that
Peter,
h met
wever,
ssor
en de
rather
office
awyer
inued

to develop the legal rather than the administrative side of their functions. By the reign of Edward I. they had become the "Lord Chief Justices" whom we know so well, and their political importance had passed to the chancellors, who were now the first ministers of the crown.

The chancellor.

The chancellor had originally been the king's private secretary; seated behind his screen (*cancella*), he made out writs, took minutes, and applied the royal seal to documents. Like the justiciar, he was at first almost invariably a Churchman, one of the king's chaplains, nor was it till the fourteenth century that lay chancellors appear upon the scene. Gradually the chancellor became a more important functionary; from being charged with the king's correspondence, he grew to have a considerable share in settling what that correspondence should contain. Becket, when chancellor, "had fifty clerks under him, and was reckoned second from the king in the whole realm." "He might be reckoned," says Dr. Stubbs, "as a sort of secretary of state for all departments." In the thirteenth century the chancellor began to take the position of the justiciar as prime minister, and his disuse of his own old functions is shown by the fact that Henry III. first of all English kings, kept a "secretarius," as a natural consequence of his

[illegible] corre-
[illegible] led to
[illegible] ar, as
[illegible] fficial
[illegible] nigh
[illegible] fered
[illegible] sition,
[illegible] last
[illegible] 1625
[illegible]

The treasurer.

[illegible] ft lay
[illegible] the
[illegible] ard at
[illegible] fficials
[illegible] ngs of
[illegible] to be
[illegible] other
[illegible] curacy
[illegible] d, and
[illegible] th the
[illegible] ttee.

Other members.

[illegible] es we
[illegible] of a
[illegible] ording
[illegible] to be
[illegible] quer,"
[illegible] cs, as

Functions of the Curia Regis.

The whole body of the Curia Regis, high and low fulfilled at least three functions—consultative, fiscal, and judicial. So little had the different parts of government been yet differentiated, that it seemed right that the same men should act as the king's privy council, as the commissioners of the treasury, and as the justices of the highest court of appeal in the realm. To realize this curious fact is the first difficulty for the student of the Anglo-Norman administrative system. The exchequer court and the privy council are merely the same men sitting in two different chambers, to deal with two different subjects; and similarly, the man who, when he is dealing with figures, is a "baron of the exchequer," becomes a justice when he deals with legal questions. From this one body of advisers, administrators, and judges we may trace the development of institutions which now seem as far apart as institutions can be—the ministry, the courts of law, and the great government offices like the Treasury or the Foreign office.

The Curia Regis followed the king during his presence in England, moving with him, and sitting wherever he happened to be. As a privy council and a law court it sat as his movements dictated, but in its fiscal character there was a

The judicial system.

the new or abnormal character of the questions involved, had no precedent by which they could be tried before the lower tribunals. Such were the primitive judicial functions of the Curia Regis, but ere long it commenced to throw out sub-committees which were to develop into new courts. The first institution evolved was that of itinerant justices. Henry I. began to send out members of his Curia Regis to visit and hold pleas in the county courts, thus relieving the Curia itself of some of the cases which would otherwise have come up to it. Henry did this with no fixed system or regularity, but his greater grandson stereotyped the custom, and to it we owe our existing institution of justices of assize. It was Henry II. also, who chose out and fixed at Westminster five of the members of the Curia, two clerks and three laymen, "to whom he ordered the complaints of the people to be brought; reserving for himself as heretofore the harder cases, to be decided with the council of the wise." These new judges came to be known as the "Court of King's Bench," the main function of which grew to be the settlement of the king's pleas, or cases in which the king was concerned. Meanwhile the Exchequer, or fiscal session of the Curia Regis, had also assumed the secondary aspect of a

(1) *Itinerant justices.*

(2) *Court of King's Bench.*

(3) *Court of Exchequer.*

court of law, dealing with revenue cases, and all disputes concerning the financial side of the constitution. Lastly, by a clause of Magna Carta, the remaining judicial functions of the itinerant Curia Regis were taken from it by the article which stipulated that "common pleas should not follow the court, but be held in some fixed place." This leads to the institution of the Court of Common Pleas, which had as its special function the decision of ordinary cases, where two subjects were the litigators, and the crown was not concerned. Thus three separate courts are found where in the early Norman days but one universal judicial and fiscal body existed.

(4) *Court of Common Pleas.*

This short sketch of the higher administrative machinery of England ought to suffice to show how extraordinarily all things hinged on the personality of the king. The Curia Regis covered all the spheres of government by its activity, and that body was almost exclusively of the king's choosing; for the existence of the hereditary official element of the great officers of the household in it counted for little.

Over the administration then, the king had an almost absolute control in normal times. But he was always liable to the occurrence of extraordinary circumstances, which would drive

him to consult the Great Council of the realm, and in that body lay the sole check to his power. Luckily, disputed successions, foreign wars, and the need for extraordinary taxation, sufficed to keep the traditional importance of the Great Council alive, and prevented the growth of absolute monarchy.

The sheriff.

When we descend to the details of administration in twelfth-century England, we soon find that the whole system hinges on one official. Into whatever branch of local government we inquire, we discover ere long, that we are recapitulating some one of the innumerable functions of the sheriff. An account of his position, and of his relations with the various institutions in shire hundred and town, gives an almost complete picture of the conduct of affairs under the Norman and early Plantagenet kings. It is the sheriff who is responsible for everything; nothing is too great or too small for his attention. It is equally his duty to go forth to war at the head of the armed force of the county, and to scrape together laborious shillings in petty fines for non-attendance at the shire-moot. He sits month by month in the seat of judgment, but it is no less his function to see that the roof of a royal barn in his district is in good repair.

It is, accordingly, in the highest degree necessary to give an accurate account of the person, position, and duties of this all-important officer, the intermediary between king and country in well-nigh every matter wherein the two come into contact.

His position before the Norman conquest.

The old English shire-reeve was, as has been stated in an earlier essay, a royal official whose origin goes back to the earliest times. He appears even in the laws of Ini. For centuries before the Conquest he had been accustomed to act for the king in financial matters; to collect for him the dues of his thegns, the produce of his royal estates, the customs of the ports which lay in the shire. When taxes came into being, it was the sheriff who had to get together the Danegeld or the ship-money of his district. Nor was this all. It was but natural that the king's fiscal representative should come into prominence in the shire-court, where the settlement of money matters formed so large a portion of the agenda. Accordingly the shire-reeve is found sitting as one of the three presidents of the shire-moot, in company with the two greater magnates, ealdorman and bishop, whose authority was exercised in the same district. As early as the legislation of Athelstan we find the sheriff given a yet wider

sphere of action, when he was directed to perform a duty neither fiscal nor judicial, that of "going and putting under surety any man who is untrue to all people," that is of exercising police duties.

When the English ealdormanries grew larger and larger in the tenth century, till they came to resemble feudal states rather than mere administrative divisions of the kingdom, it must have become less usual to see the ealdorman appear in person at every meeting of the shire-moot. The more the shires in his sphere of authority, the less frequent must his visits have been. By the reign of Edward the Confessor, they must have grown to be the exception rather than the rule. Godwine, for example, with eight or nine shires under his hand, would have found his life a burden if he had to attend every shire-moot of each of his subject districts. It may well have been the same to a certain extent with the bishop. When the dioceses were reconstituted after the Danish invasions, some were large to a cumbersome degree. A prelate whose bishop-stool was fixed at Dorchester on the Thames, while his diocese stretched up to the Humber, cannot have been a very regular attendant at Leicestershire or Huntingdonshire courts. With the sheriff, how-

How affected by the Conquest.

completely broke up the system of the great earldoms. By the time that Domesday Book was compiled, there were only four shires in England which were under the authority of an earl—Northumberland, Shropshire, and the "palatine earldoms" of Durham and Chester. In the rest of the land there was no longer any great dignitary to stand between the shire and the king's direct authority. But the feudal danger was not gone; it had only changed its shape. The royal power, if not imperilled by high officials bearing sway over groups of shires, had yet to make itself supreme over the new baronage. The French and Norman adventurers, who had joined as partners in William's great undertaking, intended to preserve as much local independence as they could. The greatest of them were only prevented by the scattered position of their estates from becoming as formidable as the old ealdormen. To keep them in check William naturally utilized the already existing machinery of the sheriffdom, the importance of which he largely increased. In consequence of the disappearance of the earl, and the withdrawal of the bishop with all his ecclesiastical pleas to his own reorganized spiritual court, the sheriff had no longer any coadjutors in the administration of the district.

earl,
ding
was
ncial
made
liam
usty
the
from
ately
ried
the
sions
e in-
royal
owed
n the
dis-
rman
were
wn in
ersally
mag-
only
But
land,
rma-
heriff

continued to be a royal officer appointed and removed at pleasure. A strong sovereign like Henry II. could at one blow displace all the sheriffs of England, and hold the great "Inquest" of 1170 to investigate their past conduct.

The sheriff's functions.

Regarding the sheriff, then, as the instrument by which the kingly power made itself felt in matters of local government, let us inquire into the details of his functions. And as he was originally a fiscal officer, it is natural to take first into consideration his responsibilities in money matters. Of these, down to their smallest details, we have an excellent account in the lengthy "Dialogus de Scaccario," a document of the reign of Henry II., which gives invaluable information as regards the royal revenue.

I. Fiscal.

(a) Supervision of the royal estates.

The primary duty of the shire-reeve in the earliest times had been to do for the king what the reeve of any private man was accustomed to do for his master—to supervise his estates, and collect their rents and dues. This naturally continued to form part of the sheriff's functions in Norman times. He had to exercise control over the bailiffs of all the royal manors in his county, to receive from them the proceeds of each estate, and to go through their accounts. For the punctual collection of the sums due by them he was responsible. He would also have

to see that the buildings on each manor were in good order, and the stock maintained at its proper amount. To give an example of the minute responsibilities of the sheriff, we find—"Hugh de Bosco, sheriff of Hants, allowed £3 9*s.* 4*d.* from his accounts, for having stocked the king's lands of Mienes with 12 oxen at 3*s.* each, and 100 sheep at 4*d.* each;"[1] and "Thomas of Cirencester, sheriff of Somerset and Dorset, allowed for the expense of 42 quarters of wheat, 75 quarters of oats, and 5 quarters of beans, used as seed on the manor of Camel." With the charge of the royal estates the sheriff usually received that of the royal castles in his shire also. And just as he was responsible for keeping in repair a farm-building, so was he responsible for maintaining a fortress in a defensible state. It is unnecessary to point out the immense importance of this charge. The whole character of mediæval warfare was settled by the well-nigh impregnable strength of the mediæval fortress. A king facing an unruly baronage had no more important possession than his castles, and the person in whose charge they were placed took over an enormous responsibility.

(β) *Collection of the "ferm."*

With the custody of the king's territorial possessions in the shire, goes logically that of

[1] Madox, "Hist. of the Exchequer," p. 643.

his claims to payment from the towns and burghs in royal demesne, that is of all which were not in private hands, but lay directly under the king's authority—far the larger number of the populous places of England. The "ferm" of these localities was in theory the composition paid by each in return for not having to support the king and his household for a given time. By the Conquest the "ferms" of the different towns were well-known definite sums; but it would seem that their collection was one of the sheriff's richest opportunities for peculation. He appears to have drawn from the burgesses not merely the amount at which their town was assessed, but as much more as he could wring out of them, all the surplus going to his own pocket. Hence the first effort in the direction of municipal independence made by the English burghs was the attempt to gain from the king permission to pay him their "ferm" directly, without having to use the sheriff as intermediary. What body it was which, by making direct application to the king, succeeded in depriving the sheriff of his right to collect the "firma burgi," we shall endeavour to decide in a later paragraph, when we come to deal with those parts of the administrative system of the twelfth century which grew up

(γ) *Collection of Danegeld and Carucage.*

which a king could put forth. When "Carucage" replaced Danegeld, these inequalities were removed. Every *caruca*, or hundred acres, no matter to whom it belonged, was now charged with the payment of a uniform quota of taxation. The monasteries protested, but when Richard I. denied them access to any court of justice till the tax should be paid, they were driven into a speedy submission.

The "Ferm" and "Danegeld" of which we have spoken represent that part of the royal revenue which proceeded from what may be strictly and accurately called taxation; but the sheriff was also charged with the collection of the proceeds of the law courts, and of feudal dues and incidents.

(δ) *Collection of judicial fines.*

It may be suspected that the large profits which prompt justice brought to the royal exchequer in the way of fines, account for much of the zeal with which the Anglo-Norman kings enforced the action of the national courts. These profits fell into three divisions. Firstly, in all cases tried in the shire-courts wherein a fine was involved, one-third of that fine went by primitive English custom to the king, just as another share accrued to the earl; and thus the first item in the sheriff's judicial budget was the "third penny"

of the shire-moot fines. Secondly, there were certain offences, the trial of which was more especially in the king's hands, and any fines that accrued from these went wholly, and not partially, to the exchequer. These "pleas of the crown" were tried by the sheriff in the capacity of a royal "Justice." The most important of these offences was "murder." That name originally meant both the secret slaying itself, and the fine of £36, paid by the hundred in which the assassination had taken place, in case of its being impossible to prove that the victim was an Englishman. But what had originally been a precaution on the part of William I. against the slaying of his Norman followers, soon came to be the ordinary method of procedure in all cases of secret homicide. The reason was that within a century the English and Norman races had become so hopelessly mixed, that it was impossible to speak with certainty about the pureness of the blood of any free-man. The crown, unwilling to lose its fines, decided that every murdered man should count as a Norman unless it could be absolutely proved that he had not a drop of un-English blood in his veins; and the persons of whom this could be proved were soon so few that "murder" passed into being the name for all

cases of assassination. In the time of Richard I. the pleas of the crown were taken from the sheriff, and given to a new officer called "coroner," chosen in the county court by the suitors there assembled, and so a national rather than a royal functionary. Gradually losing all his duties save that of inquest in cases of murder, the coroner drifted into his present modest position. Thirdly, there was yet another way in which the county court and also the hundred court contributed to the king's revenue. Fines were due from all who failed to attend them, and these were carefully gathered in by the sheriff, and formed an appreciable item in the accounts which he had to present before the Exchequer at his Easter and Michaelmas visits.

(e) *Collection of feudal dues.*

From the branches of the sheriff's accounts which were concerned with judicial profits, we turn to the feudal dues. The Anglo-Norman kings, while careful enough to deprive their vassals of the privileges which made feudalism profitable to the subject, were strict in enforcing those of its usages which benefited the royal exchequer. First came the three legal *aids*, which the king might raise on the occasions of his eldest son's knighthood, his eldest daughter's marriage, and his own captivity in war. Next

we have *reliefs*—the fines paid by a successor on taking over the lands of a deceased relative. William II. had made them a profitable means of oppression, but by the time of Henry II. the sums payable on a barony or knight's fee had become settled at £100 and £5 respectively. *Wardship* was perhaps the next most important feudal incident. The power over the lands and persons of heirs who were under age could easily be turned to account by an oppressive king; the former by reckless exhaustion of the stock and soil of the estate, the latter by using the right of giving away the minor in marriage, and receiving large sums from those who gained by the transaction. The sheriff, entitled as the royal representative to keep an eye on all wards and the persons appointed as their guardians by the king, was doubtless able to make his profit from them. King John and his officials were specially noted for their abuse of wardship, a fact which has secured a considerable space in Magna Carta for clauses relating to its limitation. There were also other minor sources of the king's feudal revenue, among which may be mentioned *escheats*,—the reversions of land to him from the extinction of a family or the treason of a tenant,—fees for permission to transfer estates

in other ways than that of strict hereditary succession, and fines exacted for the violations of forest law—*e.g.* for "*essarts*," or illegal clearings in woods, and for non-attendance at the forest courts. In the reign of Henry II. a new item was added to the feudal profits of the crown by the institution of "*scutage* in commutation of service." This was a composition raised in lieu of the forty days' personal service in the royal army, to which every holder of a knight's fee was liable by the conditions of his tenure. The knights readily accepted the scheme, while the king found himself able to raise with the funds of the scutage a permanent force of mercenaries, who formed a much more efficient army than the untrained feudal levies. The amount of this composition was almost invariably twenty shillings on each knight's fee.

The sheriff before the Exchequer Court.

For all these branches of the royal revenue the sheriff was responsible. Twice a year he appeared before the Exchequer Court and went through the whole of his accounts with the barons of the exchequer. The payments were made in huge masses of silver pence—the only coins current in the kingdom—which were paid over by weight, not by tale, that the king might not be cheated by clipped pieces. Each sheriff's payment of pence was also carefully tested with

the crucible; samples being melted down, to see that the king might not, while receiving good weight, be deceived with base metal. The accounts were kept by the very primitive method of tallies, which were notched laths of wood, on which the sums were indicated by the cuts. They were split down the middle, and one of the halves was carried away by the sheriff, while the other remained with the exchequer. It was useless to tamper with the signs on one half while the other was in existence, and thus there was little danger of quarrels over past accounts.

II. Military.

We have now to pass to the sheriff's next class of functions—his military capacities. The kings of England never committed the defence of the realm exclusively to the feudal levies. The old theory of the *fyrd*—the nation in arms—was consistently kept up; and now that there was no one corresponding to the old ealdorman to take the command of the armed men of the shire, that function fell (unless the king appointed some special commander for the occasion) into the hands of the sheriff. In the case of a prolonged and distant expedition that official would not, of course, have been long spared from the routine of his home duties. But in the case of sudden levies to

meet unexpected dangers, the *exercitus scirarum* would be raised and led by their sheriffs. Such an occasion was the mustering of the army which defeated the Scots at the Battle of the Standard, when the sheriffs of Yorkshire took command. Similar examples are found in the suppression of the feudal revolt of 1173, and in the siege of Bedford, held by Fawkes de Breauté's followers, in 1224. In the fourteenth century, however, the sheriff's authority in the province of war was practically superseded by the issue of "commissions of array," which set other persons to muster men in the king's name. But the formal abrogation of the sheriff's military power did not take place till Queen Mary appointed a lord-lieutenant for each English county in 1556.

We have now dealt with the deliberative and judicial bodies which assisted the king in the supervision of the administration of England, and with the royal officials through whom the details of the administration were carried out. All these personages were but portions of a simple but efficacious system for bringing the king's will to bear on the nation. They are all royal and not national in character, and are in no sense representative. In the higher branches of administration it appeared as if that

share in the government of the realm which in the days before the Norman conquest had fallen to the Witenagemot, an assembly which undoubtedly represented the nation, had been entirely transferred into the hands of the sovereign. But when we descend to the lower administrative machinery of the land, we find that the state of things is entirely different. Representative institutions, far from disappearing, come more and more to the front, and the elective method which was one day to give England her House of Commons makes its first essays in local administration and local finance, as a preparation for its extension in the thirteenth century to the broader and weightier affairs of the whole country. This movement is a growth from below, strongly contrasting with the working of the higher branches of government, where everything was unrepresentative, and rested ultimately on the mere will of the sovereign.

Local administration.

On all local institutions in England feudalism was superimposed; but the new arrangements did not replace those which previously prevailed, but rather coexisted alongside of them. Thus in the manor the lord held his Court Customary to deal with his tenants in accordance with feudal usage, and his Court Leet (if he possessed the grant of *sac* and *soc*) to try their petty

(1) *Manorial courts.*

criminal offences. But side by side with these survived the Court Baron, which represented the old assembly of the freemen of the township gathered in their moot to pass bye-laws for themselves, and transact their own local business. Moreover, the king, being interested in the hundred-moot and shire-moot, by reason of the profits which he drew from them, was naturally determined to keep the courts of the lords of the manor in due subordination. It was his object to secure that as little litigation as possible should be carried on before the lord's representative, and as much as possible before his own, the sheriff and the itinerant justices. Hence it came that the manor courts remained comparatively unimportant, and all affairs of weight came either before the courts of the hundred and shire, the free assemblies of the people of the smaller or larger district, who met as common subjects of the crown, not as common tenants of any feudal superior, or before the itinerant justices, who were purely royal officers.

(2) *The hundred court.* The hundred court need detain us only while we mention that twice a year it was the scene of the "View of Frankpledge," when all the inhabitants of the hundred had to present themselves before the sheriff, to prove that they were duly enrolled in a "tithing" of ten persons

mutually responsible for each other's good conduct. The fact that the supervision of local police machinery, save in a few exceptional cases where a lord enjoyed special privileges, was placed in the hands of the king's officer, to the exclusion of feudal influences, is a point to be clearly marked when the outlines of the English constitution are discussed.

(3) *The shire court.*

The shire court deserves more notice. It is remarkable as the first body in England in which a system of representation prevailed. In the twelfth century it was no longer attended by the whole population of the county, but by landholders and their stewards, together with the reeve and four men from each township as representatives of their fellows. Being thus already composed in great part of delegates, it was easy and natural for the shire-moot to carry the principle of representation a step further, by choosing committees to represent itself. Such a delegated body, for example, were the "twelve legal men" or "knights" of the Constitutions of Clarendon, who were to decide whether disputed lands belonged to the Church or not; the four knights who were to begin proceedings at the judicial iter of 1194; and—far more important—the "four discreet men of the county," who were to meet John at Oxford in 1213, "to

(a) *It develops the principle of representation.*

talk with him concerning the affairs of the kingdom." This last should be specially noted as the first attempt to make the Great Council representative rather than feudal. For if to that assembly there once came men who were not tenants-in-chief, but representatives of each county, the whole character of the supreme deliberative body of the realm would have to be altered. It would be a prototype of the modern representative parliament, rather than a development of the feudal institution which figured in twelfth-century history. It is probable, indeed, that these "four discreet men" of 1213 were chosen by the sheriff rather than by the full county-court; but their importance lies in their representative function, not in the method of their election, and in the following essay we shall show how the idea thus sketched out by John's writ became the instrument of popular, not of royal influence. When, indeed, elected representatives were officiating in township, hundred, and shire for other purposes—for example, in assessing taxes like the "Saladin tithe" of 1188—it was not to be supposed that they would not in course of time rise to fulfil the highest function of all, that of representing the shire at the Great Council.

Turning to the judicial aspect of the shire-

moot, we find that during the twelfth and thirteenth centuries its independent action was gradually being superseded by that of the king's itinerant justices. But this did not mean that royal authority was simply absorbing the last privileges of the English freeman. The crown of its own accord took the nation into partnership in this matter. We have already seen how it placed the holding of the "pleas of the crown" in the hands of a coroner chosen by the shire, in 1194. The ordinary meeting of the county court, indeed, grew unimportant in comparison with those extraordinary meetings in which the itinerant justices appeared. But when the justices presided therein, the accused persons whom they were to try were "presented" by a jury of twelve knights or legal men from each hundred, who were in no way chosen by royal influence, but were strictly representatives of the district. Moreover, when the ordeals and judicial combats which survived far into the twelfth century finally fell into disuse, their place was filled by the finding of another kind of jury, who decided on the truth or falsehood of the facts which had formed the basis of the "presentment" made by the first jury. In these two bodies—the one whose duty was presentment, and the other whose duty was inquest—

(β) *Its judicial powers.*

we have the origin of the modern *grand jury* and *petty jury*. The first secured that no man should come before the justices unless a body which ultimately represented the shire should hold that there was a *primâ facie* case against him, while the second decided whether that case was borne out by the facts. Thus there was an ample check on the irresponsibility of the royal judges, and oppression was rendered difficult in ordinary times. It was only by the terrorism of a tyrant that the juries and the bodies which chose them could be so overawed as to make their functions in the courts formal and nugatory. Such oppression would not stand alone, but would be the manifestation in one province of administration of a general misrule which would render the ruler who employed it unbearable. Bad justice, in short, would be the forerunner of insurrection, wherein feudal and national elements would unite, to the confounding of the oppressor. Such a sequence may be found in the series of events which led up to Magna Carta.

The towns. To complete the account of the local administration of England in the twelfth century, we must pass on to the towns, of which we have avoided much previous mention, in order to deal with their position in a single and separate section. In the days immediately after the Norman conquest

the English towns were simply townships, or clusters of townships, which differed from the humblest villages only in two respects. Firstly, they had obtained the right of having a fixed "Firma Burgi," and were thus aware of the maximum demand which the sheriff could legally make on them for that particular item of the royal revenue. But for other exactions, being considered to be in royal demesne land, unless they were formally in the hands of one of the great tenants-in-chief, they were still liable to the sheriff's oppression. Secondly, for judicial purposes the towns had been "made equal to hundreds;" that is, their inhabitants did not appear at the moot of the hundred in which they were locally situate, but had a "port-moot" of their own, which was equal in status to a hundred-moot. To endeavour to get rid of the sheriff's tax-collecting visits, and to turn him out of the port-moot, were the objects of all towns, and attempts to secure these ends are the first marks of progress toward municipal liberty in England. To be able to treat with the king, and to guarantee to him the superior profits which alone could induce him to grant the town the boon it craved, some responsible body had to be found. As to the identity of that body, the most various views have been held, but it

Their privileges.

is safest to hold with Dr. Stubbs that the organization which treated with the king comprised the fully qualified citizens of the place, the "tenants in burgage" of the crown, who held lands and houses within the borough, and formed the port-moot. This body, if it bound itself by association into a definite unity, would be called a "communa," and the right to form a "communa" is, therefore, the first which a town would crave. Throughout the twelfth century the various centres of population in England obtained charters making them responsible for their own ferm, and free from certain specified forms of exaction by the sheriff. As early as 1100, London obtained another grant in the province of judicature. This was the charter of Henry I., which practically gave the city authority over the whole shire of Middlesex, by conceding to it the right to elect two sheriffs, who were to be responsible for all within the county boundary, just as were the sheriffs of other shires. Of course, when the representative of the crown became elective, the oppressive characteristics of his office gradually disappeared. But in this matter London was far ahead of all other towns. The very inferior privilege of exemption from the ordinary meetings of the county court was not obtained by other places for a century,

and freedom from those more important county courts where the itinerant justices appeared, was never won at all, save by those cities which in far later times came to be reckoned as "counties in themselves."

Their constitutions.

The English borough constitutions are of a most composite and confusing character. This results from the interfusion of the systems of the old township, the communa, and the guild. Of the two first we have spoken; the last requires a few words. Guilds with social or religious purposes have already been mentioned as characterizing the period before the Conquest. But it is the Guild Merchant, or association for trade purposes of the citizens of the town, with which we have now to deal. All fully privileged inhabitants of the town being members of the guild, its personality was at first practically the same as that of the town itself, so that a charter to the guild was much the same as a charter to the "communa" of the place. Richard I., for example, heads his charter to Winchester as granted "to the men of Winchester *in their Merchant Guild*," instead of to the citizens. The organization of the guild was that of brethren electing aldermen, and from the early identification of the guild with the town, comes the fact that the name of alderman is now found as that

of a municipal dignitary, though the first bearers of the title were but the chiefs of a trades union. For such, in fact, was the original meaning of the guild merchant. In the thirteenth century the guild became so much the shape in which the town's identity was imagined to lie, that it obtained permission to make its own bye-laws binding on all the community. But presently as the guild merchant grew exclusive, a class arose,—mainly from immigrant villeins from the shires,—who were not included in it, and between the privileged and the unprivileged a bitter strife grew up.

The alderman therefore, was the representative of the guild; the mayor, on the other hand, was the representative of the "communa" of the place; for the last and crowning privilege of a town constitution was that its "communa" should be "*concessa*," *i.e.* not a mere private association, but a body made legally recognizable, with the privilege of choosing a mayor as its formal head and representative. The town councillor, on the other hand, has an older pedigree, representing the old organization of the township with its leet-jury, before communa or guild had been thought of.

The development of the constitutions of the various English towns was most irregular. In the twelfth century every different stage of

immunity from the sheriff's interference, and every form of judicial independence, was contemporaneously existent. London had a mayor and communa when many other places had barely compounded with the king for their "ferm," and all the intermediate degrees between those two points could be illustrated. But by the reign of John even the least privileged place had at any rate acquired a personality and legal status, if nothing more; and thus it was possible for the English towns to take that important place in the politics of the realm which they assume after the reign of Henry III., a place which as mere townships they would never have occupied.

Opposition of the towns to the crown.

Having never felt the evils of feudalism, but as having fully experienced the disadvantages of the strong hand of the royal official,* the towns had their own particular bent and political notions. These tended towards opposition to the crown, so soon as it was clear that the strength of the crown was no longer needed to prevent the chronic outbreak of feudal anarchy. The last throes of that struggle had been seen in the rising of 1174. It is from that

* We should except from this general statement towns like Leicester or St. Alban's, which were not in royal demesne, but were subject to a lord, lay or spiritual.

of a municipal dignitary, though the first bearers of the title were but the chiefs of a trades union. For such, in fact, was the original meaning of the guild merchant. In the thirteenth century the guild became so much the shape in which the town's identity was imagined to lie, that it obtained permission to make its own bye-laws binding on all the community. But presently as the guild merchant grew exclusive, a class arose,—mainly from immigrant villeins from the shires,—who were not included in it, and between the privileged and the unprivileged a bitter strife grew up.

The alderman therefore, was the representative of the guild; the mayor, on the other hand, was the representative of the "communa" of the place; for the last and crowning privilege of a town constitution was that its "communa" should be "*concessa*," *i.e.* not a mere private association, but a body made legally recognizable, with the privilege of choosing a mayor as its formal head and representative. The town councillor, on the other hand, has an older pedigree, representing the old organization of the township with its leet-jury, before communa or guild had been thought of.

The development of the constitutions of the various English towns was most irregular. In the twelfth century every different stage of

immunity from the sheriff's interference, and every form of judicial independence, was contemporaneously existent. London had a mayor and communa when many other places had barely compounded with the king for their "ferm," and all the intermediate degrees between those two points could be illustrated. But by the reign of John even the least privileged place had at any rate acquired a personality and legal status, if nothing more; and thus it was possible for the English towns to take that important place in the politics of the realm which they assume after the reign of Henry III., a place which as mere townships they would never have occupied.

Opposition of the towns to the crown.

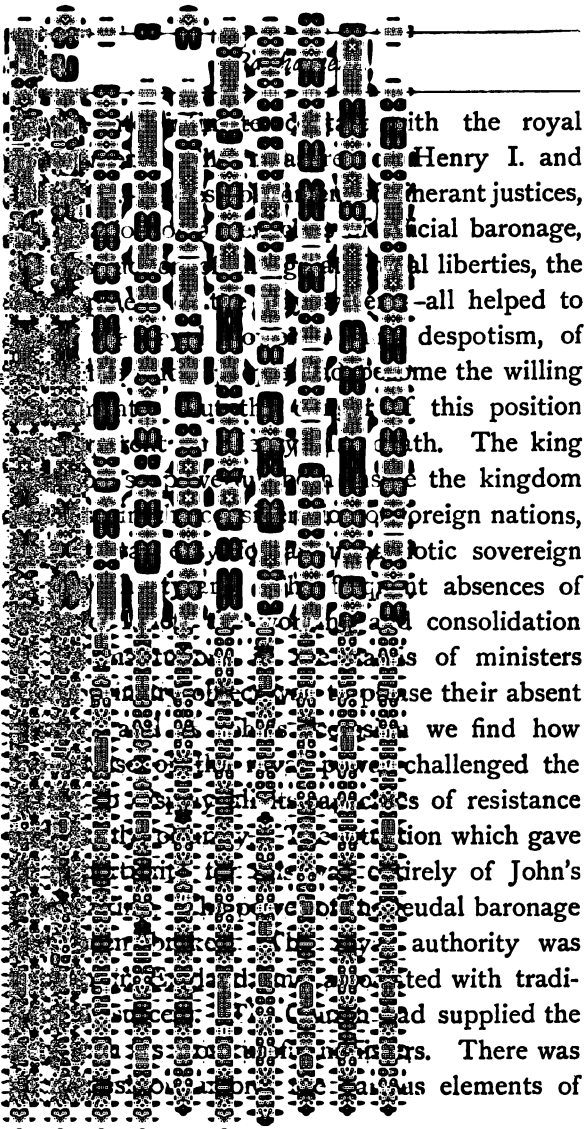
Having never felt the evils of feudalism, but as having fully experienced the disadvantages of the strong hand of the royal official,* the towns had their own particular bent and political notions. These tended towards opposition to the crown, so soon as it was clear that the strength of the crown was no longer needed to prevent the chronic outbreak of feudal anarchy. The last throes of that struggle had been seen in the rising of 1174. It is from that

* We should except from this general statement towns like Leicester or St. Alban's, which were not in royal demesne, but were subject to a lord, lay or spiritual.

date, then, that we may vaguely trace the desire to curb the royal power as arising in the boroughs. Naturally, therefore, they take sides with the baronage in the reign of John, and their participation in the struggle against tyranny is marked by the name of the mayor of London, placed half-way down the list of the great twenty-five who undertook the enforcement of the instrument of English liberties.

Summary A few words suffice to sum up the general course of English constitutional history in the times of the Anglo-Norman and earlier Plantagenet kings. We have investigated the leading characteristics of a period whose main feature is the development of administrative organization. We have seen how, while feudal separation reigned over the greater part of Europe, one state at least was guided into a centralized and bureaucratic autocracy, in which all things ultimately depended on the will of the king. Yet from the very moment at which the crown won its last victory over feudalism, another movement begins to make itself felt. As long as anarchy had been impending, any firm central government—even an oppressive one—would be received with acquiescence by the nation. But when the danger was over, the heavy yoke of the Anglo-Norman administrative system

began to seem more burdensome. When the working of its machinery came under the control of a versatile but callous and reckless tyrant, who was ready to utilize all the opportunities for oppression which it afforded, baronage and people alike rose in revolt. But the revolt is orderly: the baronage do not demand a return to feudal anarchy; the people do not commence a Jacquerie. The one take their stand, not on local independence, but on their legal position as advisers of the crown; the other—borrowing a term from the borough constitution—speak of themselves as the "communa" of the whole realm; the orderly association of all freemen, not the tumultuous assembly of insurgents. Order and legality, however oppressive they had been in the government, had so impressed themselves on the nation, that even its revolt was legal and orderly. It formulates its demands as the accurate definition of already existing rights, not as the grant of fresh privileges; and all English reforms ever after have taken this same shape, as assertions of old customs, not as new departures towards ideal principles. Magna Carta aims at the practical redress of visible wrongs, not at the establishment of a limited monarchy or any other theoretical end. This was its strength and its



began to seem more burdensome. When the working of its machinery came under the control of a versatile but callous and reckless tyrant, who was ready to utilize all the opportunities for oppression which it afforded, baronage and people alike rose in revolt. But the revolt is orderly: the baronage do not demand a return to feudal anarchy; the people do not commence a Jacquerie. The one take their stand, not on local independence, but on their legal position as advisers of the crown; the other—borrowing a term from the borough constitution—speak of themselves as the "communa" of the whole realm; the orderly association of all freemen, not the tumultuous assembly of insurgents. Order and legality, however oppressive they had been in the government, had so impressed themselves on the nation, that even its revolt was legal and orderly. It formulates its demands as the accurate definition of already existing rights, not as the grant of fresh privileges; and all English reforms ever after have taken this same shape, as assertions of old customs, not as new departures towards ideal principles. Magna Carta aims at the practical redress of visible wrongs, not at the establishment of a limited monarchy or any other theoretical end. This was its strength and its

their leadership these traditions were reduced to writing and forced upon the king. The result was Magna Carta, purporting to be nothing new, but merely the declaration of old law. Some of its provisions had been for generations among the recognized customs of the country; others had grown recently out of the exigencies of the time. It was useful to have a definite statement of the customs of the land to which all classes could appeal. Such a code is the mark of transition from the stage of organization to that of law. But the chief importance of the charter does not consist in this. It consists rather in the witness which that document bears to the rearrangement of the political forces of which it was the result. This was the work of the period which runs from the granting of the charter in 1215 to its final confirmation by Edward I. in 1297.

Importance of Magna Carta.

No constitutional advance was possible so long as the efforts of the popular leaders could be neutralized by the action of a royal council composed of foreigners and favourites. The loss of Normandy and the feeling of national unity which had found expression in the charter, gave redoubled meaning to the outcry against the employment of strangers in the government. The king, on his side, was equally determined

The feudal council becomes national.

to revenge himself for the desertion of the official baronage by forming a body whose foreign origin should render them entirely dependent on himself. It was the question of personal as opposed to national rule which was in debate, and it is because the barons do not at first understand this that the struggle lasts so long. They treated the whole matter as one between themselves and the royal favourites who stood between them and the offices which they regarded as rightfully theirs. For the personal rule of the king they only substituted an oligarchical government composed of the most important members of their own body. Their internal quarrels increased the confusion of the country. The machinery of government became an elaborate system of committees, composed for the most part of the same series of members. But this was not all. Magna Carta had drawn a distinction between the greater and lesser tenants-in-chief, who were all equally entitled to be consulted in matters of taxation. There was considerable risk that the most powerful section of the baronage would recur to the old feudal, anti-national position. There was also a danger that the remainder of the tenants-in-chief would form themselves into a caste. In this state of things it was more than probable

talk with him concerning the affairs of the kingdom." This last should be specially noted as the first attempt to make the Great Council representative rather than feudal. For if to that assembly there once came men who were not tenants-in-chief, but representatives of each county, the whole character of the supreme deliberative body of the realm would have to be altered. It would be a prototype of the modern representative parliament, rather than a development of the feudal institution which figured in twelfth-century history. It is probable, indeed, that these "four discreet men" of 1213 were chosen by the sheriff rather than by the full county-court; but their importance lies in their representative function, not in the method of their election, and in the following essay we shall show how the idea thus sketched out by John's writ became the instrument of popular, not of royal influence. When, indeed, elected representatives were officiating in township, hundred, and shire for other purposes—for example, in assessing taxes like the "Saladin tithe" of 1188—it was not to be supposed that they would not in course of time rise to fulfil the highest function of all, that of representing the shire at the Great Council.

Turning to the judicial aspect of the shire-

moot, we find that during the twelfth and thirteenth centuries its independent action was gradually being superseded by that of the king's itinerant justices. But this did not mean that royal authority was simply absorbing the last privileges of the English freeman. The crown of its own accord took the nation into partnership in this matter. We have already seen how it placed the holding of the "pleas of the crown" in the hands of a coroner chosen by the shire, in 1194. The ordinary meeting of the county court, indeed, grew unimportant in comparison with those extraordinary meetings in which the itinerant justices appeared. But when the justices presided therein, the accused persons whom they were to try were "presented" by a jury of twelve knights or legal men from each hundred, who were in no way chosen by royal influence, but were strictly representatives of the district. Moreover, when the ordeals and judicial combats which survived far into the twelfth century finally fell into disuse, their place was filled by the finding of another kind of jury, who decided on the truth or falsehood of the facts which had formed the basis of the "presentment" made by the first jury. In these two bodies—the one whose duty was presentment, and the other whose duty was inquest—

(β) *Its judicial powers.*

we have the origin of the modern *grand jury* and *petty jury*. The first secured that no man should come before the justices unless a body which ultimately represented the shire should hold that there was a *primâ facie* case against him, while the second decided whether that case was borne out by the facts. Thus there was an ample check on the irresponsibility of the royal judges, and oppression was rendered difficult in ordinary times. It was only by the terrorism of a tyrant that the juries and the bodies which chose them could be so overawed as to make their functions in the courts formal and nugatory. Such oppression would not stand alone, but would be the manifestation in one province of administration of a general misrule which would render the ruler who employed it unbearable. Bad justice, in short, would be the forerunner of insurrection, wherein feudal and national elements would unite, to the confounding of the oppressor. Such a sequence may be found in the series of events which led up to Magna Carta.

The towns. To complete the account of the local administration of England in the twelfth century, we must pass on to the towns, of which we have avoided much previous mention, in order to deal with their position in a single and separate section. In the days immediately after the Norman conquest

the English towns were simply townships, or clusters of townships, which differed from the humblest villages only in two respects. Firstly, they had obtained the right of having a fixed "Firma Burgi," and were thus aware of the maximum demand which the sheriff could legally make on them for that particular item of the royal revenue. But for other exactions, being considered to be in royal demesne land, unless they were formally in the hands of one of the great tenants-in-chief, they were still liable to the sheriff's oppression. Secondly, for judicial purposes the towns had been "made equal to hundreds;" that is, their inhabitants did not appear at the moot of the hundred in which they were locally situate, but had a "port-moot" of their own, which was equal in status to a hundred-moot. To endeavour to get rid of the sheriff's tax-collecting visits, and to turn him out of the port-moot, were the objects of all towns, and attempts to secure these ends are the first marks of progress toward municipal liberty in England. To be able to treat with the king, and to guarantee to him the superior profits which alone could induce him to grant the town the boon it craved, some responsible body had to be found. As to the identity of that body, the most various views have been held, but it

Their privileges.

is safest to hold with Dr. Stubbs that the organization which treated with the king comprised the fully qualified citizens of the place, the "tenants in burgage" of the crown, who held lands and houses within the borough, and formed the port-moot. This body, if it bound itself by association into a definite unity, would be called a "communa," and the right to form a "communa" is, therefore, the first which a town would crave. Throughout the twelfth century the various centres of population in England obtained charters making them responsible for their own ferm, and free from certain specified forms of exaction by the sheriff. As early as 1100, London obtained another grant in the province of judicature. This was the charter of Henry I., which practically gave the city authority over the whole shire of Middlesex, by conceding to it the right to elect two sheriffs, who were to be responsible for all within the county boundary, just as were the sheriffs of other shires. Of course, when the representative of the crown became elective, the oppressive characteristics of his office gradually disappeared. But in this matter London was far ahead of all other towns. The very inferior privilege of exemption from the ordinary meetings of the county court was not obtained by other places for a century,

and freedom from those more important county courts where the itinerant justices appeared, was never won at all, save by those cities which in far later times came to be reckoned as "counties in themselves."

Their constitutions.

The English borough constitutions are of a most composite and confusing character. This results from the interfusion of the systems of the old township, the communa, and the guild. Of the two first we have spoken; the last requires a few words. Guilds with social or religious purposes have already been mentioned as characterizing the period before the Conquest. But it is the Guild Merchant, or association for trade purposes of the citizens of the town, with which we have now to deal. All fully privileged inhabitants of the town being members of the guild, its personality was at first practically the same as that of the town itself, so that a charter to the guild was much the same as a charter to the "communa" of the place. Richard I., for example, heads his charter to Winchester as granted "to the men of Winchester *in their Merchant Guild*," instead of to the citizens. The organization of the guild was that of brethren electing aldermen, and from the early identification of the guild with the town, comes the fact that the name of alderman is now found as that

of a municipal dignitary, though the first bearers of the title were but the chiefs of a trades union. For such, in fact, was the original meaning of the guild merchant. In the thirteenth century the guild became so much the shape in which the town's identity was imagined to lie, that it obtained permission to make its own bye-laws binding on all the community. But presently as the guild merchant grew exclusive, a class arose,—mainly from immigrant villeins from the shires,—who were not included in it, and between the privileged and the unprivileged a bitter strife grew up.

The alderman therefore, was the representative of the guild; the mayor, on the other hand, was the representative of the "communa" of the place; for the last and crowning privilege of a town constitution was that its "communa" should be "*concessa*," *i.e.* not a mere private association, but a body made legally recognizable, with the privilege of choosing a mayor as its formal head and representative. The town councillor, on the other hand, has an older pedigree, representing the old organization of the township with its leet-jury, before communa or guild had been thought of.

The development of the constitutions of the various English towns was most irregular. In the twelfth century every different stage of

immunity from the sheriff's interference, and every form of judicial independence, was contemporaneously existent. London had a mayor and communa when many other places had barely compounded with the king for their "ferm," and all the intermediate degrees between those two points could be illustrated. But by the reign of John even the least privileged place had at any rate acquired a personality and legal status, if nothing more; and thus it was possible for the English towns to take that important place in the politics of the realm which they assume after the reign of Henry III., a place which as mere townships they would never have occupied.

Opposition of the towns to the crown.

Having never felt the evils of feudalism, but as having fully experienced the disadvantages of the strong hand of the royal official,* the towns had their own particular bent and political notions. These tended towards opposition to the crown, so soon as it was clear that the strength of the crown was no longer needed to prevent the chronic outbreak of feudal anarchy. The last throes of that struggle had been seen in the rising of 1174. It is from that

* We should except from this general statement towns like Leicester or St. Alban's, which were not in royal demesne, but were subject to a lord, lay or spiritual.

date, then, that we may vaguely trace the desire to curb the royal power as arising in the boroughs. Naturally, therefore, they take sides with the baronage in the reign of John, and their participation in the struggle against tyranny is marked by the name of the mayor of London, placed half-way down the list of the great twenty-five who undertook the enforcement of the instrument of English liberties.

Summary A few words suffice to sum up the general course of English constitutional history in the times of the Anglo-Norman and earlier Plantagenet kings. We have investigated the leading characteristics of a period whose main feature is the development of administrative organization. We have seen how, while feudal separation reigned over the greater part of Europe, one state at least was guided into a centralized and bureaucratic autocracy, in which all things ultimately depended on the will of the king. Yet from the very moment at which the crown won its last victory over feudalism, another movement begins to make itself felt. As long as anarchy had been impending, any firm central government—even an oppressive one—would be received with acquiescence by the nation. But when the danger was over, the heavy yoke of the Anglo-Norman administrative system

began to seem more burdensome. When the working of its machinery came under the control of a versatile but callous and reckless tyrant, who was ready to utilize all the opportunities for oppression which it afforded, baronage and people alike rose in revolt. But the revolt is orderly: the baronage do not demand a return to feudal anarchy; the people do not commence a Jacquerie. The one take their stand, not on local independence, but on their legal position as advisers of the crown; the other—borrowing a term from the borough constitution—speak of themselves as the "communa" of the whole realm; the orderly association of all freemen, not the tumultuous assembly of insurgents. Order and legality, however oppressive they had been in the government, had so impressed themselves on the nation, that even its revolt was legal and orderly. It formulates its demands as the accurate definition of already existing rights, not as the grant of fresh privileges; and all English reforms ever after have taken this same shape, as assertions of old customs, not as new departures towards ideal principles. Magna Carta aims at the practical redress of visible wrongs, not at the establishment of a limited monarchy or any other theoretical end. This was its strength and its

drawn into intimate contact with the royal government. The measures of Henry I. and Henry II.—the establishment of itinerant justices, the creation of a new class of official baronage, the destruction of the great feudal liberties, the development of the jury system—all helped to make the royal power a pure despotism, of which the whole people had become the willing instruments. But the danger of this position was apparent on Henry II.'s death. The king was now so powerful, both inside the kingdom and also in the consideration of foreign nations, that it was easy for an unpatriotic sovereign to play the tyrant. The frequent absences of Richard I. left the working and consolidation of his institutions in the hands of ministers whose primary object was to please their absent master; and at John's accession we find how the misuse of the royal power challenged the nation to display all its capacities of resistance and, finally, of unity. The situation which gave an opportunity for this was entirely of John's own making. The power of the feudal baronage had been broken. The royal authority was popular in England, and associated with traditions of success. The Church had supplied the king with his most useful ministers. There was no disposition among the various elements of

society to combine together; and all the professional skill in administration was enlisted on the side of the king. Sixteen years of John's rule threw all these various elements into an irresistible national combination. The loss of Normandy equally deprived the baronage and the king of external aid, set the king face to face with the people, and raised the two important questions of foreign favourites and of foreign service. The surrender of the kingdom to the pope forced the clergy into a definite attitude. Hitherto they had been the opponents of oppression in all forms. Now that the alliance of their two masters had cut off the possibility of appealing from the nearer to the more remote, they had to choose between two conflicting duties—that which they owed to the pope, and that which was due to their country. To these two causes was added the generally oppressive working of the system which Henry II. had placed in the hands of the king. The people now began to regard the king as their greatest foe instead of their protector. In the face of a common danger all classes drew gradually together. The king had alienated even the official baronage, the trained administrators of the country, whose duty it was to guard the traditions of government. Under

National combination against John.

their leadership these traditions were reduced to writing and forced upon the king. The result was Magna Carta, purporting to be nothing new, but merely the declaration of old law. Some of its provisions had been for generations among the recognized customs of the country; others had grown recently out of the exigencies of the time. It was useful to have a definite statement of the customs of the land to which all classes could appeal. Such a code is the mark of transition from the stage of organization to that of law. But the chief importance of the charter does not consist in this. It consists rather in the witness which that document bears to the rearrangement of the political forces of which it was the result. This was the work of the period which runs from the granting of the charter in 1215 to its final confirmation by Edward I. in 1297.

Importance of Magna Carta.

No constitutional advance was possible so long as the efforts of the popular leaders could be neutralized by the action of a royal council composed of foreigners and favourites. The loss of Normandy and the feeling of national unity which had found expression in the charter, gave redoubled meaning to the outcry against the employment of strangers in the government. The king, on his side, was equally determined

The feudal council becomes national.

to revenge himself for the desertion of the official baronage by forming a body whose foreign origin should render them entirely dependent on himself. It was the question of personal as opposed to national rule which was in debate, and it is because the barons do not at first understand this that the struggle lasts so long. They treated the whole matter as one between themselves and the royal favourites who stood between them and the offices which they regarded as rightfully theirs. For the personal rule of the king they only substituted an oligarchical government composed of the most important members of their own body. Their internal quarrels increased the confusion of the country. The machinery of government became an elaborate system of committees, composed for the most part of the same series of members. But this was not all. Magna Carta had drawn a distinction between the greater and lesser tenants-in-chief, who were all equally entitled to be consulted in matters of taxation. There was considerable risk that the most powerful section of the baronage would recur to the old feudal, anti-national position. There was also a danger that the remainder of the tenants-in-chief would form themselves into a caste. In this state of things it was more than probable

that the struggle for power would end in a mere scramble for booty, and that the charter would thus have increased the division between classes, instead of drawing them closer together into a national bond. That such was not the result was mainly due to the activity of the knights in the county courts, and to the opportune advent of the friars, whose self-sacrificing work tended in no mean degree to modify the selfish feelings which were fostered by the state of the political world.

Formation of a popular national party.

It was by the formation of a party which could claim the support of both the lesser tenants-in-chief and the friars, that the solution of the constitutional question was worked out. The inadequacy of the constitution as arranged by Magna Carta could no longer be concealed. Henry merely used the lesser tenants-in-chief in order to recover his lost prerogatives from the hands of his self-imposed ministry; but the power, when regained, was used, not for the benefit of his supporters, but to promote the return of the foreign kinsmen and the interference of the pope. In the three years, 1261–1264, the real solution of the difficulty was discovered. That solution was the outcome of a popular movement whose causes may be traced most definitely within these three years.

In the first place, there was a section of the oligarchical party whose members, though impelled partly by ambition, had in some degree the welfare of the kingdom seriously at heart. Such men must have begun to understand that the only way of preventing the plunder of the people, either by king or barons, would be to give them a position inside the central organization of the state. Moreover, the pressure exercised on the people by the union of pope and king had begun to cause the people themselves to take active measures in their own behalf. The movement took outward expression in a number of rough rhymes, both in Latin and English, which were soon scattered broadcast over the country. Thus there had been found pens to formulate the popular complaints; there were only wanting brains and hands to organize and enforce them. It was as yet early to hope for these within the body of the people. But now, as ever at a crisis, there were members of the baronage ready to espouse the popular cause. The conduct of the king rendered necessary the employment of force. Henry used the aid of the pope to absolve him from all pledges, and employed the credit of the country in the pursuit of purely personal aggrandizement. The popular party

Policy of Simon de Montfort.

came together under the leadership of Simon de Montfort, and the battle of Lewes, in May, 1264, left De Montfort practically dictator of the kingdom. From May, 1264, to August, 1265, he was the first man in England; and in that period he had succeeded in finding the method in which the constitutional question could be answered. Earl Simon's supporters were drawn from the ranks of the clergy, the knightly class throughout the country, and the commercial classes of the towns, whose trade had been ruined by the king's exactions at a moment when they were growing in organization and in wealth. The assembly to which he appealed for help was one composed of these elements. The higher clergy had been accustomed to attend the national assembly from time immemorial. On several occasions of late representatives had been brought up from the shire courts. But no king had yet thought of including the towns in the Great Council. No doubt the immediate reason for the summons of the boroughs was the dearth of the baronial following on Simon's side, and the strenuous support which the townsfolk had given him. The occasion however found them fully prepared for the honour thrust upon them, since the methods of local government had

familiarized Englishmen with the two ideas of representation and election. Such was the origin of the assembly, which foreshadowed the perfected Parliament of the three estates.

But for Earl Simon the complete solution was not possible. He had fought as the head of a section both of the people and of his own class, but the inevitable break-up of a party founded on the twofold and generally incompatible basis of private interest and public utility did not necessarily mean that the movement had been without result. The victory lay with the royal party, but only remained with it permanently because the representative of royalty in the future himself stepped forward as the exponent of those ideas which had been embodied in the popular movement. When, in 1295, Edward summoned the Parliament which became the model for all future national assemblies entitled to that name, and when in 1297, his last attempts at arbitrary power gave way in the presence of the organized national force which he had been so instrumental in moulding into shape, the lesson of the last eighty years had been learnt; the rule of feudalism in any form whatsoever was at an end. The Confirmatio Cartarum was but the interpre-

The Model Parliament, 1295.

tation of the central article of Magna Carta, forced on the king by a growing and vigorous nation.

Growth of the separate estates.

In order to understand the full significance of the stage which the constitution had reached in 1295, it will be necessary to examine individually the several portions, or as they were technically called, Estates, of which the Parliament was composed. According to the mediæval theory, these were three: (1) the spiritual estate; (2) the baronage; and (3) the commons. The assembly, so composed, was called together in strict accordance with definite rule; and it is because the forms observed in 1295 were those which ultimately became stereotyped upon the constitution, that we are justified in considering the assembly of that year as the first normal Parliament.

I. *The spiritual estate.*

The first or spiritual estate, which comprised the whole body of the clergy, may be divided into two: (1) the lords spiritual; (2) the lower clergy.

(1) *The lords spiritual.*

The lords spiritual included the bishops, abbots, some few priors, and the heads of two or three religious orders. The original qualification of the spiritualty to take part in national assemblies had been founded, like that of all members of the Witenagemot, on their wisdom.

But after the Norman conquest, unlike the temporal baronage, they had merely added the claim of tenure without impairing the original title by which they had been called. At a moment when tenure inclined to be the basis of all political claims, the greater members of this hierarchy were the possessors of large baronies. They sat in the Great Council of the realm, side by side with the great barons. Their superior learning made them the most indispensable members of that body. To all outward appearance they were barons, and a very formidable class of barons.

But notwithstanding the importance and numbers of the spiritual lords, there were conditions which rendered it far easier for the king to limit both the number and the power of the spiritualty than that of the temporalty. The sees of bishops had never in England become hereditary. Abbots and priors were usually glad to escape the burden of attendance at the Great Council. It was always, therefore, possible for the king to send writs of summons only to those upon whom he could depend.

The results of this were seen when the assembly, which had been founded on a feudal or a class basis, gave way to one which brought

the whole nation face to face with the sovereign. All the bishops and the baronial abbots were still included among the members whose presence the king especially desired. The jealousy of the rest of the clergy on behalf of clerical immunities, and the double relation in which they stood towards king and pope, led them to ignore the numerous and persistent efforts of Edward I. and his successors to give them a voice in the government of the land, and to meet, as an estate by themselves, outside the national assembly.

(2) *General body of the clergy.*

We have seen that the bishops and higher clergy enjoyed their baronial tenure in common with those of the laity who were summoned to the national council. Nevertheless, they found themselves far more in harmony with the meaner brethren of their order than with the great barons with whom they were thrown. The whole body of the clergy was trained to common action in synods and ecclesiastical councils. Such councils were frequent, and contained a complete organization of the whole spiritual body, both prelates and cathedral chapters, archdeacons and parish priests. Moreover, not only had the clergy their separate courts, but in the acceptance and use of the canon law they were amenable to an entirely different code and

standard of judgment. The sole point of political or constitutional contact which remained to any portion of the clergy with the laity, was now found in the baronies of the prelates and the abbots. So long as taxation fell upon the land alone, the bishops were forced into union with the temporal members of the central council. But when taxation was extended so as to include the spiritual revenue obtained from tithes and offerings, the various ranks of the clergy were drawn together by an interest common to themselves apart from the laity.

In matters of taxation it had been common for the king's officers to treat from time to time with the clergy in their ecclesiastical assemblies. But the more general character which taxation had now assumed, necessitated a more general machinery of collection; and this was found in the summoning of the Convocations, begun by Stephen Langton in 1225, but not completed in form until 1283. By the final regulations the archbishop of each province issued summonses to his senior suffragan, empowering him to collect on a certain day, at a certain place, all the bishops, abbots, priors, heads of religious houses, deans of cathedrals and collegiate churches, and all archdeacons in person throughout the province, and at the same time to direct that there

should be chosen in each diocesan synod two proctors to represent the clergy of the diocese, and in each cathedral and collegiate chapter one proctor to act on its behalf.

Representation of the clergy.

In early times the organization of the Church had led the way for that of the state. Ever since Magna Carta, however, the two had advanced together. Now that Edward I. desired to define the relations between the several estates of the realm, he sought to unite the two provinces in one body. This was to substitute for two spiritual assemblies, one temporal representation of the spiritual estate, and thus to transfer to the national council the temporal powers which had hitherto been wielded by a purely spiritual assembly. With this object in view, after several preliminary attempts at securing a partial representation of the clergy, Edward finally, in 1295, formulated a complete temporal representation of the spiritual estate. By a clause in the general writ to the clergy, known from its opening word as the "præmunientes" clause,[1] the king directs the bishops to premonish the clergy to appear with him in the Parliament in the following way: (1) The deans and priors of cathedrals and the archdeacons in person; (2) one proctor as the representative

[1] Stubbs, "Select Charters," p. 484.

of each cathedral chapter; (3) two proctors as representatives of the clergy of each diocese. From the very first, however, the clergy showed great reluctance to obey this summons. The old feeling of the value and importance of clerical immunity from lay control still existed. For nearly thirty years, from 1314 to 1340, a separate letter was addressed to the two archbishops at the summons of each Parliament, admonishing them to compel the attendance of the clerical representatives. But, as far as the king's object was concerned, this extra summons had no effect. The summonses of the archbishops to Convocation were obeyed: the summonses under the "præmunientes" clause were a mere matter of form, and the only result was that another session of the clerical Convocations was held under their usual form, which discharged their accustomed business of voting a free gift for the royal needs. The crown in the end accepted its defeat, and though to this day the præmunientes clause is inserted in the parliamentary writs of summons to the bishops, no further pressure ever has been put upon the clergy to bring them into the assembly of the estates.

II. Estate of temporal peers.

The qualifications by which a temporal peer acquired the right to sit in Parliament were

Qualifications of peers. three in number:- (1) tenure by barony; (2) receipt of a special writ of summons; (3) creation by patent.

(1) *Tenure.* The Great Council of the Norman kings had been composed of all tenants-in-chief of the crown. It was not long however before a distinction arose in that body. Those of its members who were the possessors of a large number of knights' fees were especially dignified with the title of barons; while the holders of a single knight's fee, the obligations of which were discharged by the personal attendance of the holder, had to rest content with the simple appellation of knight, which they shared in common with the whole body of tenants-in-chief and of knightly landowners who held of other lords. An attempt has been made to show that this distinction existed from the first; but as we have to note so often in English history, the practical difference preceded the legal recognition of its existence. This difference is found as early as the charter of Henry I. By the reign of Henry II. it is clearly marked. But its final recognition is established in the celebrated clause of Magna Carta (§ 14), which prescribes the mode of summons to the Great Council—"summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones, sigillatim per litteras

(2) *Summons.*

nostras; et præterea faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis tenent in capite." The difference thus definitely expressed was shown in more ways than one. The barons, who were entitled to a special summons, were wont to deal in all money matters direct with the royal exchequer, instead of being merely handed over to the tender mercies of a royal official in the person of the sheriff, whose transactions were directed in accordance with certain definite rules. Moreover, the greater baron came to a military levy at the head of all his tenants, whereas his lesser brother-in-arms arrayed himself with the local forces under the guidance of the sheriff. These differences were all the growth of custom, and would scarcely of themselves have organized the whole feudal array into two entirely independent bodies or classes of men. But the separation thus begun was very conclusively marked by the article of Magna Carta, to which allusion has been made above.

Thus there was now added by law, as well as custom, to the old qualification of tenure, the new one of summons. Nor is it long before we find that this summons is in some cases, especially in those of the baronial members of the royal council, sufficient qualification of itself

Qualifications of peers. three in number:- (1) tenure by barony; (2) receipt of a special writ of summons; (3) creation by patent.

(1) *Tenure.* The Great Council of the Norman kings had been composed of all tenants-in-chief of the crown. It was not long however before a distinction arose in that body. Those of its members who were the possessors of a large number of knights' fees were especially dignified with the title of barons; while the holders of a single knight's fee, the obligations of which were discharged by the personal attendance of the holder, had to rest content with the simple appellation of knight, which they shared in common with the whole body of tenants-in-chief and of knightly landowners who held of other lords. An attempt has been made to show that this distinction existed from the first; but as we have to note so often in English history, the practical difference preceded the legal recognition of its existence. This difference is found as early as the charter of Henry I. By the reign of Henry II. it is clearly marked. But its final recognition is established in the celebrated clause of Magna Carta (§ 14), which prescribes the mode of summons to the Great Council—"summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones, sigillatim per litteras

(2) *Summons.*

nostras; et præterea faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis tenent in capite." The difference thus definitely expressed was shown in more ways than one. The barons, who were entitled to a special summons, were wont to deal in all money matters direct with the royal exchequer, instead of being merely handed over to the tender mercies of a royal official in the person of the sheriff, whose transactions were directed in accordance with certain definite rules. Moreover, the greater baron came to a military levy at the head of all his tenants, whereas his lesser brother-in-arms arrayed himself with the local forces under the guidance of the sheriff. These differences were all the growth of custom, and would scarcely of themselves have organized the whole feudal array into two entirely independent bodies or classes of men. But the separation thus begun was very conclusively marked by the article of Magna Carta, to which allusion has been made above.

Thus there was now added by law, as well as custom, to the old qualification of tenure, the new one of summons. Nor is it long before we find that this summons is in some cases, especially in those of the baronial members of the royal council, sufficient qualification of itself

Qualifications of peers. three in number:- (1) tenure by barony; (2) receipt of a special writ of summons; (3) creation by patent.

(1) *Tenure.* The Great Council of the Norman kings had been composed of all tenants-in-chief of the crown. It was not long however before a distinction arose in that body. Those of its members who were the possessors of a large number of knights' fees were especially dignified with the title of barons; while the holders of a single knight's fee, the obligations of which were discharged by the personal attendance of the holder, had to rest content with the simple appellation of knight, which they shared in common with the whole body of tenants-in-chief and of knightly landowners who held of other lords. An attempt has been made to show that this distinction existed from the first; but as we have to note so often in English history, the practical difference preceded the legal recognition of its existence. This difference is found as early as the charter of Henry I. By the reign of Henry II. it is clearly marked. But its final recognition is established in the celebrated clause of Magna Carta (§ 14), which prescribes the mode of summons to the Great Council—"summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones, sigillatim per litteras

(2) *Summons.*

nostras; et præterea faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis tenent in capite." The difference thus definitely expressed was shown in more ways than one. The barons, who were entitled to a special summons, were wont to deal in all money matters direct with the royal exchequer, instead of being merely handed over to the tender mercies of a royal official in the person of the sheriff, whose transactions were directed in accordance with certain definite rules. Moreover, the greater baron came to a military levy at the head of all his tenants, whereas his lesser brother-in-arms arrayed himself with the local forces under the guidance of the sheriff. These differences were all the growth of custom, and would scarcely of themselves have organized the whole feudal array into two entirely independent bodies or classes of men. But the separation thus begun was very conclusively marked by the article of Magna Carta, to which allusion has been made above.

Thus there was now added by law, as well as custom, to the old qualification of tenure, the new one of summons. Nor is it long before we find that this summons is in some cases, especially in those of the baronial members of the royal council, sufficient qualification of itself

for appearance in Parliament. One great object of Edward I. was to stamp out as far as possible the importance which the feudal idea of tenure exercised in determining the political life of the country. It is in relation to this well-known feature of his policy that he has been styled the creator of the House of Lords, as much as he is generally acknowledged to be the creator of the House of Commons.

Nor did Edward's innovations cease here. These special writs of summons were issued fresh for each Parliament: they were only available for that individual assembly, and could not of themselves "express or found a permanent right." It was natural, however, that they should generally be sent to the same persons, namely, to those whom it would be impolitic to omit. Edward's plan of procedure did much to encourage and to stereotype this system, which served to mark off the greater barons still more distinctly from the general throng of the tenants-in-chief.

(3) *Patent.* The creation of a barony by letters patent is a later method. At first used only in the case of a few earldoms, it was some time before it was extended so as to apply to the lower rank of nobility. The first instance of its use is in 1387, when Sir John Beauchamp, of Holt, was

created Lord Beauchamp, Baron of Kidderminster, in hereditary possession for himself and his heirs male. This specification of the manner in which the barony should descend was what especially marked off this new method of creation from the old; for a barony, the claim of which to representation in Parliament came from reception of a special writ, often descended to heiresses. This form of creation became the usual method of bestowing a right to a seat in the House of Lords in the time of Henry VI. The position thus accorded to the new barons could not well be denied to the older members, whose only claim had hitherto been founded on the regular reception of a writ of summons.

Growth of the temporal peers as an estate of the realm.

Helped by the employment of one or other of these methods, the greater barons gradually and silently acquired a community of interest which welded them into a permanent body. The council of feudal barons became the House of Lords. Not that the royal right of summons was ever surrendered; it merely assumed the shape of a permanent attribute of a particular body of men. The problem that remained to be worked out was simply one of giving legal form to what had already been accomplished in fact. Such legal recognition may be said to have begun in 1322, when the earls and barons,

as peers of the realm, passed sentence upon the Despencers. The position which they assumed on that occasion was again asserted in 1331, when the same body passed sentence upon Mortimer, protesting at the same time that they were not bound to sit in judgment upon "others than their equals." This was no new power that the barons were assuming. The duties of a high court of justice had belonged to the Great Council of the realm, and the barons had assembled too often in that council to merge at a moment's notice in the Parliament of the whole nation, the organization and the powers which they had hitherto enjoyed apart. Nor, as it happened, was such a surrender in the least degree necessary. When the greater barons were reinforced in Westminster Hall by representatives of the shires and boroughs, it is not likely that the various estates ever voted together. At the best, the different estates occupied different portions of the same hall. And ere the old privileges of the feudal *régime* had quite disappeared before the encroachments of the popular representatives, an important event had happened. Soon after the accession of Edward III. the lords and commons had definitely divided off from each other into two separate assemblies. This prevented the neces-

sity of any surrender on the part of the lords of any power or privilege which they had possessed as members of the Great Council, provided that the retention of such did not interfere with the rights of the commons. Of these the most important was the right of judicature, a right which the commons never attempted in the Middle Ages to usurp. Under shadow of this right the *pares* of Magna Carta were now acquiring a technical meaning. So much is this the case, that in 1341 the *pares terræ* claim a fellowship in rank with each other apart from the rest of the community, when, in response to the claim of Archbishop Stratford to be tried by his peers, the lords report to the king "that on no account should peers be brought to trial except in full Parliament and before their peers." The final stage was reached on the accession of the house of Lancaster, whose legal title to the throne depended on its recognition by Parliament. It was plain that if this recognition was to be a legal and constitutional act, it must proceed from a body constituted in accordance with old custom, and not from an arbitrarily summoned assembly of partisans. After this time, therefore, the council of prelates and barons assumed a more definitely fixed form. Summonses were invariably sent to the same people, and the

method of creation by patent finally decided the status of the members of the House of Peers.

We have now enumerated the constituent elements of the House of Lords. It remains for us to trace to its origin the English House of Commons.

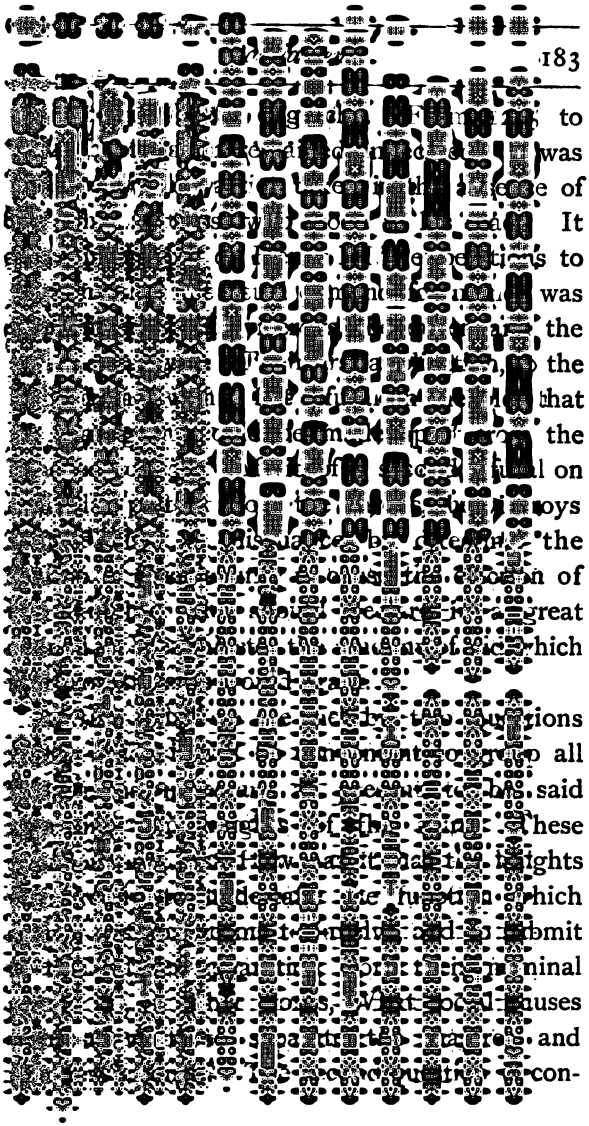
III. Estate of the commons. Its composition. The third estate is not a division drawn from the consolidation of classes. It owes its origin rather to the overthrow of caste distinctions, and is the expression of political, not of social, relations and interests. Briefly speaking, the body of the commons signifies two things: first, the freemen drawn together into definite bodies for the accomplishment of special purposes; secondly, the represented freemen in contradistinction to the magnates. The whole body is a formation of the thirteenth century and is the outcome of the political exigencies of the times, finding their expression through the medium of the ancient machinery of local government. It is made up of two clearly defined factors—the knights of the shire, and the representatives of the boroughs.

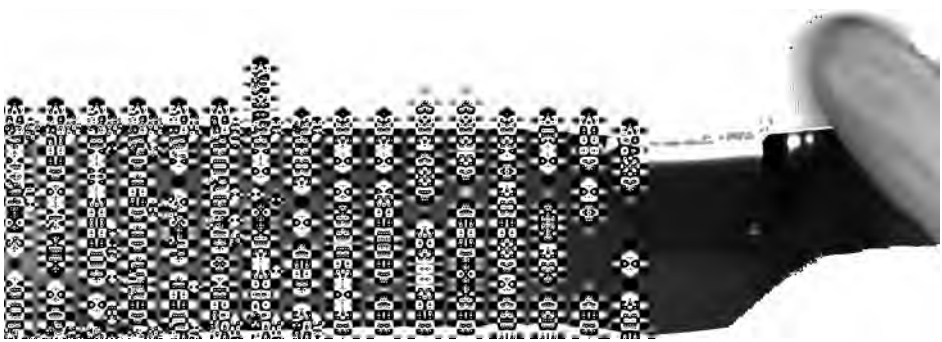
(1) *The knights of the shire.* In speaking of the growth of the estate of temporal lords, it has been mentioned that the membership of the feudal council belonged to an increasingly large and, as far as the varying extent of their individual possessions was con-

cerned, a very miscellaneous body; and that it was the royal power of summons, constantly exercised in the same direction, which finally reduced this body to the size of the more modern House of Lords. We saw further that the practical use of this power of summons was to bring together out of the whole feudal body such only of its members as the king either desired or was obliged to summon. The latter class — those whose presence was practically necessary—would naturally be the tenants of the largest lands. They seem to have acquired the special designation of *majores barones*, and, on the showing of Magna Carta, to have expected a special summons addressed to them in person. The rest of the royal tenants, distinguished as *minores barones*, or often simple knights, had to rest content with a general summons which reached them through the sheriff. The constitutional recognition of this position in Magna Carta practically upset the feudal basis of society established at the Norman conquest. It was because the Conqueror had done all that lay in his power to prevent the extension of this feudal basis to the government, that society had broken up so soon. There can be no stability in a country, and therefore no power of progression in an orderly line, unless

History of their rise.

the basis of the constitution tallies with that on which the social relations are formed. The distinction between a special and a general summons had existed previous to Magna Carta, but the constitutional recognition of the difference which then took place, must have degraded to the lower class many who, by the occasional receipt of a special summons, considered themselves entitled to a place among the *majores barones*. And now that this was no longer forthcoming, the only members of the body of tenants-in-chief who would be likely to put in an appearance would be such as might find it convenient or positively necessary to attend. In this consisted the whole difficulty of the situation. Unless some new method were discovered whereby the basis of the constitution could be enlarged, the government threatened to become a permanent oligarchy of a strictly feudal type. The clause of Magna Carta would not be a solution of old difficulties, but merely the origin of new. Moreover, in his struggles with the great feudatories, the king had relied much on the help he had received at the hands of the provincial knights and the freeholders. It was scarcely probable that he would abandon, at the moment when he most wanted it, what had hitherto been his most effective weapon

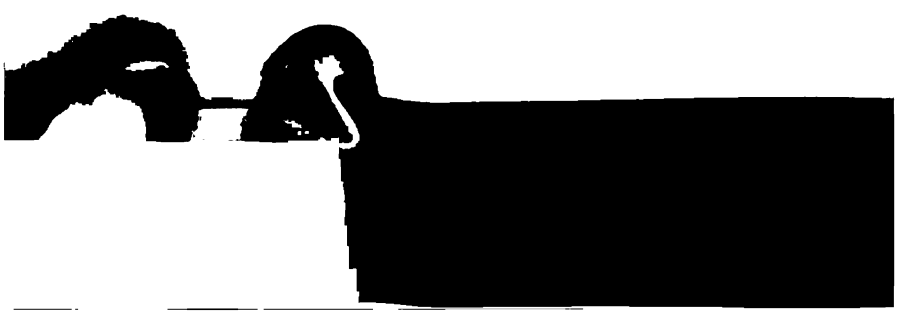


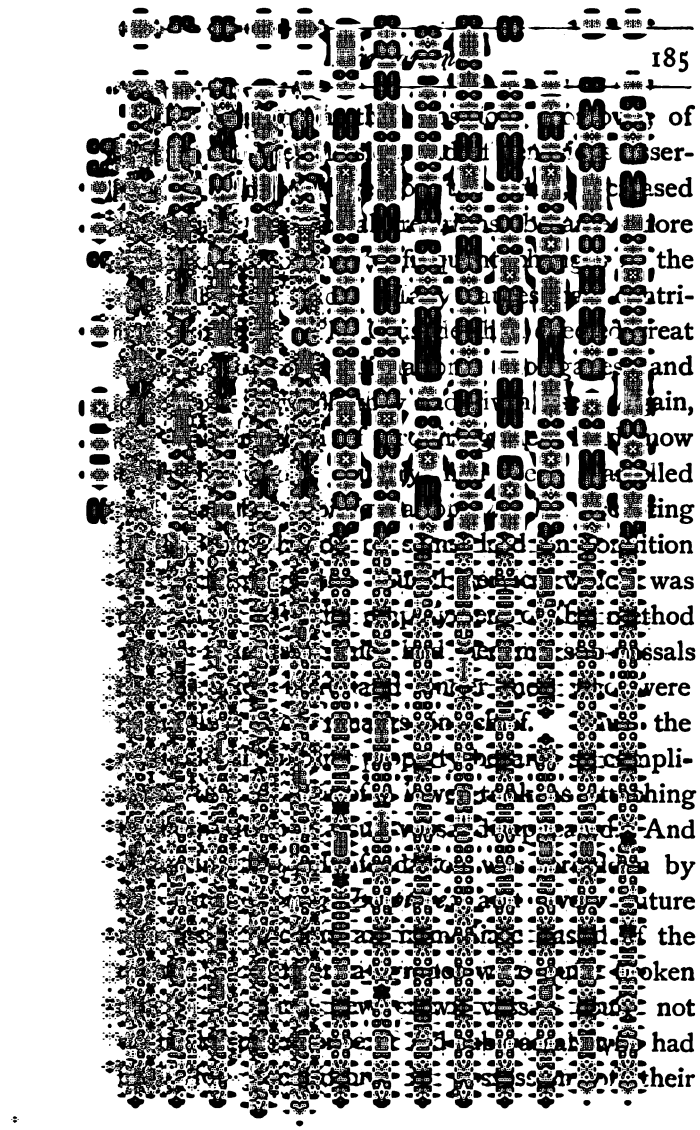


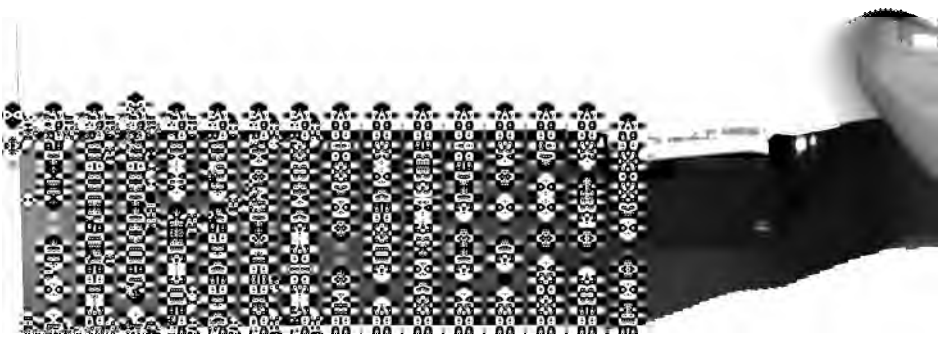
cerned with the constituents of the knights: Who exactly were these knights intended to represent, being, as they were, members of the baronage, elected in the court of the freeholders?

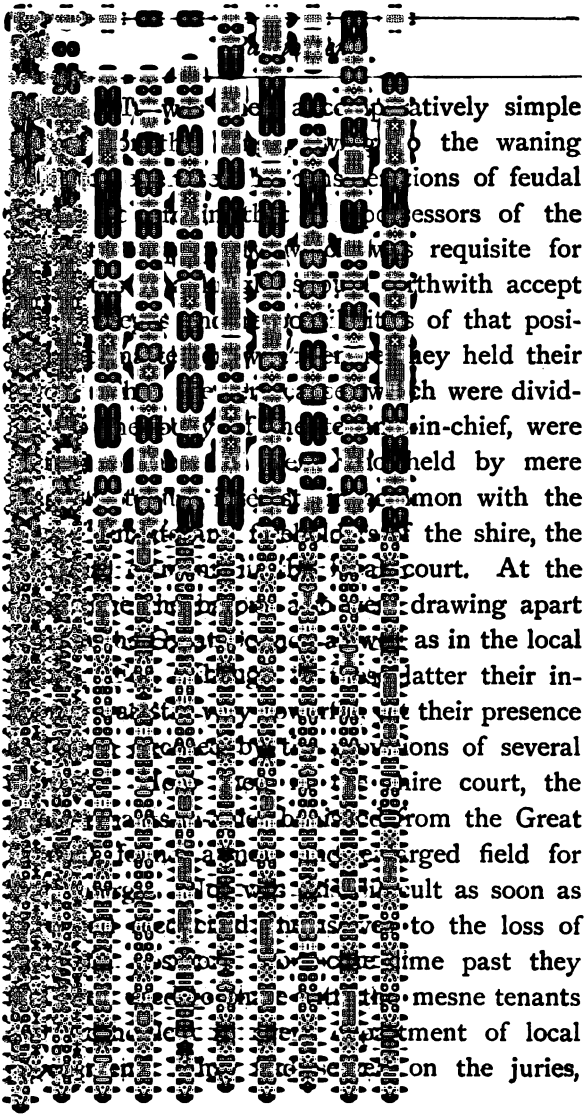
(a) *Separation between the majores and minores barones.*

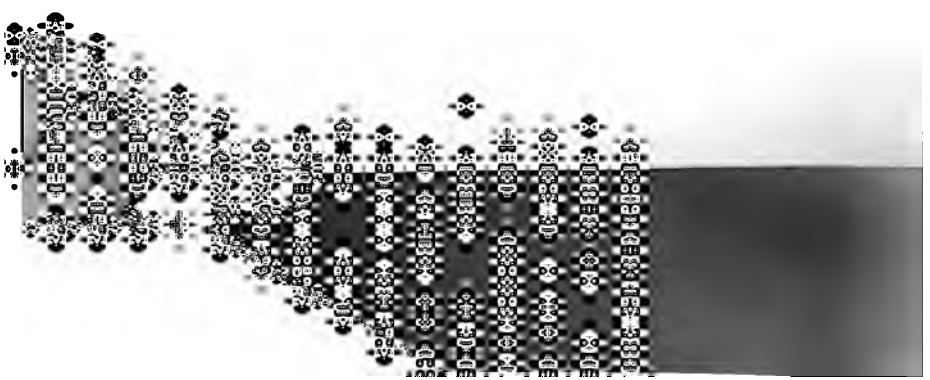
It is not necessary to dwell further upon the fact of the separation in the ranks of the feudal baronage, nor upon the constitutional method by which it was marked. Neither the one nor the other will permanently remain fixed in our minds unless we understand the social conditions which caused them. In the first place, it is probable that the greater barons regarded with jealousy the equality of suffrage which the inferior tenants-in-chief may have claimed with themselves. This jealousy would be much increased after the clause of Magna Carta, which had no doubt been framed partly with the intention of preventing the king from flooding the council with a number of his followers, sufficient to outvote the greater barons. It was natural, however, that the lesser barons should not resign their constitutional position as *pares* without a struggle. Nor, in fact, did they do so until the selfish policy of the greater barons had shown them that such obstinacy would only result in their becoming the tool of one or other of the dividing factions, so long as of themselves they were too weak to form an opposition.



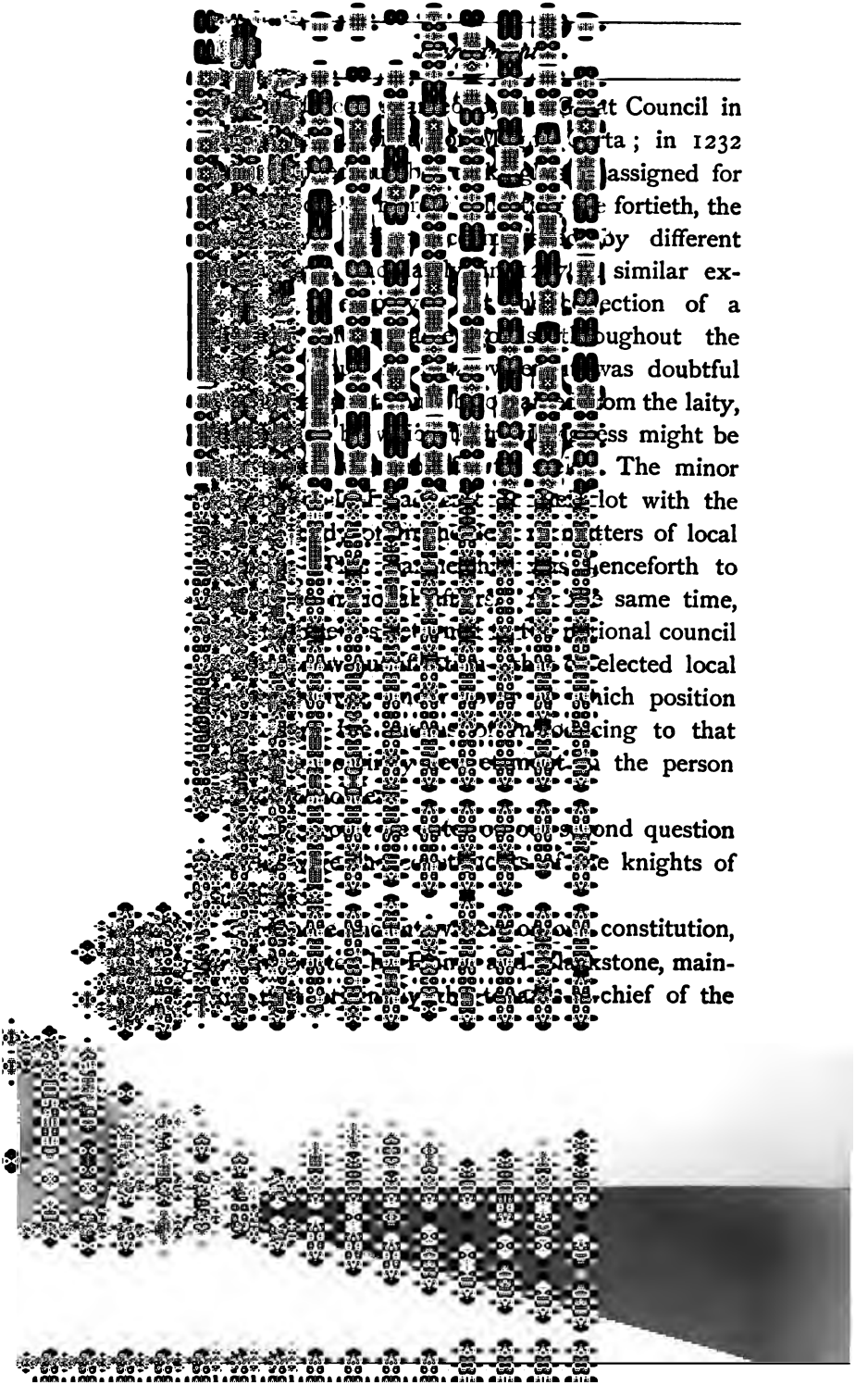








by means of which most of the judicial work of the country was carried on; their votes were counted among those of the other members of the county court in the election of coroners for the conservation of the peace, and, after 1277, of the *custos pacis*, in whom originated the later office of justice of the peace. These same minor tenants-in-chief, too, had helped to elect and had themselves served as the representatives in each county for the execution of remedial measures, such as were necessary in accordance with the terms of Magna Carta. Finally, the minor tenants-in-chief had played their part in the juries elected to assess taxation. It was this last matter with which the local courts were especially busy between 1215 and 1254, and which possibly at the same time reconciled the minor tenants-in-chief to the loss of their old position in the Great Council, while it almost certainly supplied the necessary clue to the method of procedure by which they were again to be included in the great assembly of the kingdom. It is important to note the chief dates in this connection. In 1220 we find that two lawful knights were chosen in full county court to assess and collect the carucage; in 1225 it is four elected knights of each hundred who assess and collect the fifteenth



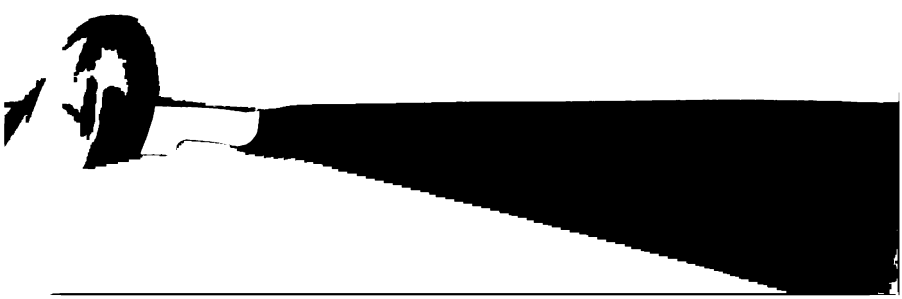
crown were alone suitors of the county courts, and consequently sole electors of knights of the shire. They proceed to account for the position occupied by the knights a century after the consolidation of the estates in Parliament, by supposing that at the break-up of the feudal system, and in the ensuing confusion between various kinds of tenure, tenants of mesne lords introduced themselves as members of the county court. In opposition to this view, we have that maintained by modern constitutional writers, that the knights were the representatives of the freeholders of the county, by whom they were elected in the county courts. The proofs of this position are abundant.

In the first place, the question practically turns on the composition of the county court at the time when knights were first elected to the national council. A description of the composition of a shire court, before it was put to the use of electing representatives, is to be obtained from the "Leges Henrici primi,"[1] where not only is there given an exhaustive list of the constituents of the court, but the use of the word "Vavassores," which is generally understood as referring to the tenant of a mesne lord, and not to a tenant-in-chief, seems conclusive proof that

[1] Stubbs, "Select Charters," p. 105.

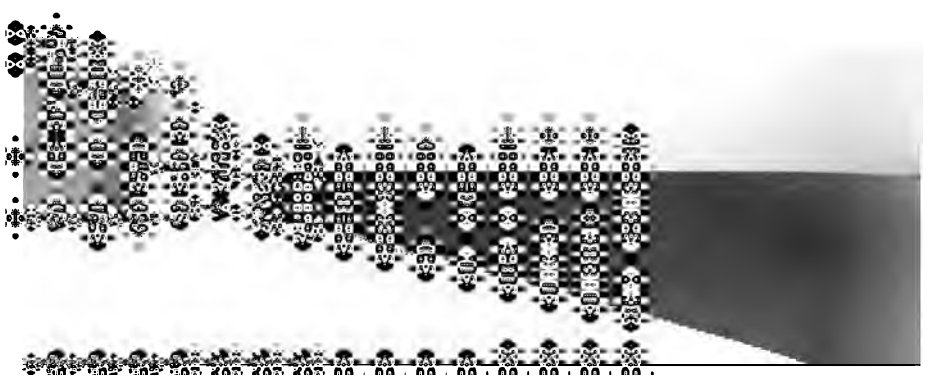
the court was not limited to the tenants-in-chief. For the constituent elements of the court, in the period during which its chief business was the election of parliamentary representatives, we are able to appeal to many of the hundred rolls, which contain instances innumerable of tenants of mesne lords who owed suit and service in courts of hundred and shire. But we cannot afford yet to put this question aside. Had the knights been merely representatives of the lesser barons, their reappearance in the national council was not, as Hallam remarks, a very extensive innovation. The position and presence of mesne tenants in the county court is very strongly marked. In a writ for the collection of scutage, issued in 1235,[1] we find mention of "*omnes milites et libere tenentes qui de iis tenent per servitium militare*," where it seems as if these free tenants who held by military service were themselves entitled to the name of "milites," and were equally eligible with the tenants-in-chief to be elected as knights of the shire. Moreover, the hundred rolls, to which allusion was made just now, tell us that these mesne tenants were often in possession of larger lands than the knights of the shire, and were, therefore, presumably of greater weight in the county. In the face of this

[1] Stubbs, "Select Charters," p. 364.



knowledge, it seems unreasonable to suppose that men of this rank would have been passed over. Again, proof positive is supplied us from the writs for electing to Parliament, in which the sheriffs are enjoined to send "*duos milites de discretioribus et ad laborandum potentioribus de comitatu*," while by other writs the knights are to be chosen "*in pleno comitatu*," and "*de assensu ejusdem comitatus*."[1] These expressions seem to admit of no such interpretation as the older constitutional writers would put on them. A final argument is found in the avowed policy of our kings to stamp out the influence which feudal theories exercised upon political life in the country. It is scarcely necessary to show proofs of this. From the Oath of Salisbury to the Distraint of Knighthood, our history is full of them. Was Edward I., of all people, we may ask, in the least likely, especially after the experiences of his father's reign, to stereotype the feudal method of government? The English system of county administration was not the product of feudal institutions. Before the representatives of counties ever were summoned to the national assembly, numberless elections had been held in the county courts, and these had been carried out in accordance with the particular constitutions of these

[1] Stubbs, "Select Charters," pp. 477, 481, 486.



four knights; but on the latter occasion they met at two separate places. This defect was remedied in 1283, when the knights were brought together on the same day and at the same place as the lords. In 1290 the knights were summoned, two months after the magnates, and then only to ratify what had been already done. In 1294 they met again with the temporal lords, but without the clergy; and in 1295 they came with the rest of the estates to the Model Parliament.

(2) *The representatives of the boroughs.*

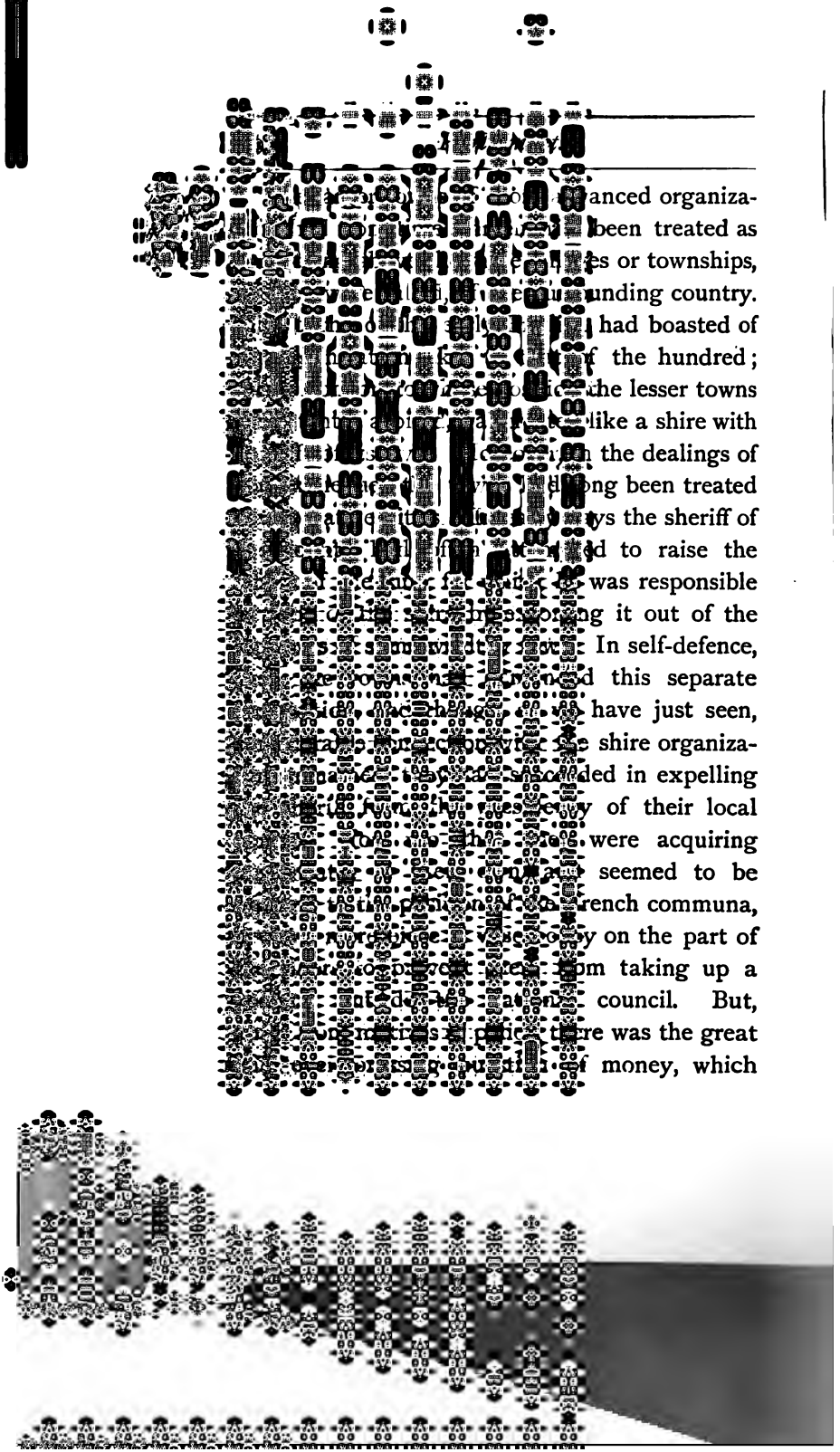
The second of the two factors which made up the composition of the third estate in Parliament was found in the representatives of the cities and boroughs. The history of their growth has been traced in a former essay up to the time when the most powerful of them were obtaining recognition of their corporate existence apart from the rest of the shire. But even those most completely equipped with machinery for self-government, maintained considerable connection with the organization of the shire. For instance, each borough still sent twelve burghers to represent the community in the full assembly of the shire court which was summoned to meet the itinerant justices. It was under view of the sheriff that the great towns elected their own coroners, mayors, bailiffs, and constables, and managed

the rest of their machinery for carrying out the Assize of Arms, and the duties of Watch and Ward, while the sheriff also still led the military contingents which the towns supplied in accordance with the provisions of the Assize of Arms.

Their connection with the shire.

The results of this continued connection with the shire court were most important, though they were perhaps rather of a negative than of a positive nature, and are only apparent when a comparison is instituted between the growth of our own constitution and that of any other mediæval state. In the first place, this habit of merging themselves for certain purposes with the larger district out of which they had been carved, prevented the English towns from ever approaching to the position of the municipalities of France and Spain, namely powerful corporations acting on their own behalf, and forming a separate estate with interests and an organization of its own. Certainly at first there seemed no slight chance of their emulating their continental brethren, for both Simon de Montfort in 1265, and Edward I. in 1283, recognized the boroughs as separate entities, in summoning their representatives by writs directed to the magistrates of each individual town. It seems almost by a lucky chance that the permanent writ was one which kept up the connection between county and town, by directing that the elections

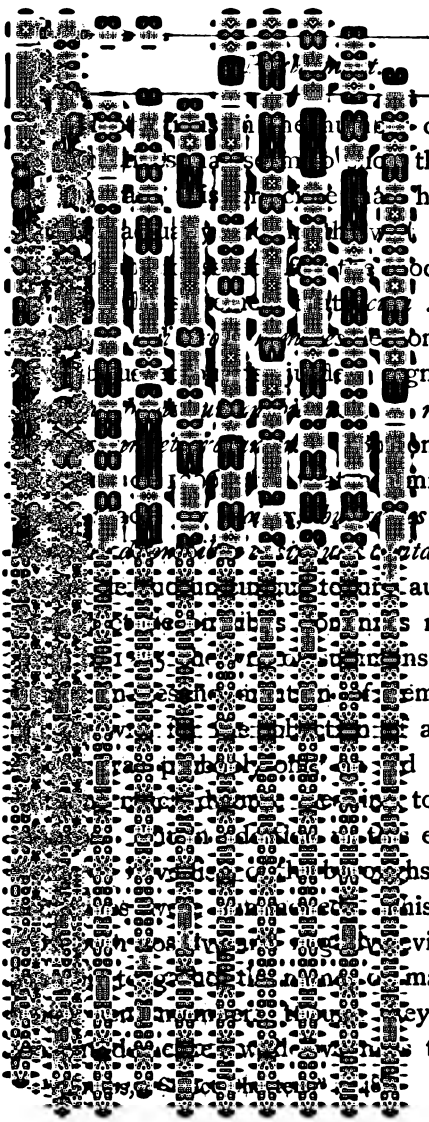
of such representatives should be returned through the sheriff of the county. But again it was probably to the enhanced importance given to the governing bodies of the towns by the summons of such representatives, that we owe the stunted condition of many of those bodies. At the time when they were first called on to send representatives, the towns were in all stages of corporate development. In some few cases they were governed by a mayor and aldermen, but the more common government was through a borough court, often monopolized by the local merchant guild, or through a leet jury with a tendency to restricted membership. It was not till the fifteenth century that charters of incorporation began to be given to the towns, wherein was legalized the restricted franchise which probably had hitherto been the rule. For the present, as we shall have reason to see later, representation was regarded as a burden rather than a privilege, and the sheriff was often able to return his own nominees. The question naturally arises, Why were the towns summoned to Parliament at all, if their representation there was and continued for so long to be unreal? The answer must be found in two directions; partly in the importance of the towns themselves, partly in the needs of the kings.



finally determined the summons of the towns. They were the portion of the community whose wealth could be most immediately realized. All towns, no matter on whose demesne they were situated, paid a fixed contribution towards the ferm of the shire; but the tallage, which was the chief tax to which they were liable, the king had to share with all his tenants-in-chief, since it was only from towns situated on his own demesne that he was able to exact it. It was a remnant of the feudal and class principles of taxation, which in the midst of the break-up of feudalism, he was attempting to abolish. Moreover the new method of taxation of moveables was far more lucrative than the old tallage. If however the king wished to make this new method a permanent reality, he must submit to its grant by the national assembly, in which body he must include representatives of the towns, as the people from whom the greatest amount of the new taxes would be levied.

Common interests with the knights of the shire.

The union of the representatives of the shires and the towns in Parliament is perhaps the most important fact in English history. It was by no means of sudden growth. The representatives of the boroughs were at first, at any rate, of an altogether different class to the knights of the shires; of different education and seem-



of borough re-
that sometimes,
have prevailed,
for the collec-
odel Parliament
. . . *cives, bur-*
ominicis nostris,
gni *septimam de*
nobis curialiter
on the contrary,
milar grant has
s et alii probi
itatibus et burgis
aut libertatibus
nostris," while
ns issued to the
emesne.[2] After
an aid, quoted
d form applied,
to new circum-
evidence from
hs whose repre-
his supplies us
evidence, for we
many boroughs
ey were not in
the names of

[2] Ibid.

many which we know from elsewhere to have occupied that position towards the king.

A claim to extreme antiquity for the presence by representatives of the boroughs in the national council has been based upon certain ambiguous phrases of the chroniclers, and upon assertions advanced by the towns of St. Albans and Barnstaple, of certain privileges which had originated with their connection from very early days with the central assembly. But the former are too indefinite to form the basis of any positive theory, while the claims of the latter have been proved to be false. It is possible that some of the richer tenants-in-burgage may have attended royal councils side by side with other freeholders, and in 1213 we have a distinct assembly of representatives from towns on the demesne of the crown. The first definite instance, however, of a borough assembly for true parliamentary purposes is found in Simon de Montfort's summons, in 1265, of the representatives of a number of separately enumerated towns through the magistrates of each. This example was not lost on Edward I. In 1273 four citizens came from every city, along with the other constituent elements of the national assembly, to take the oath of allegiance to Edward in his absence. In 1282 it was Edward's definite act which

The fluctuations in the number of borough representatives may seem to show that sometimes, at any rate, this principle may have prevailed, and we actually find, in the writ for the collection of an aid issued after the Model Parliament of 1295, the statement that "*cum . . . cives, burgenses et alii probi homines* de dominicis nostris, civitatibus et burgis ejusdem regni *septimam de omnibus bonis suis mobilibus . . . nobis curialiter concesserint et gratanter.*"[1] But, on the contrary, the writ of 1296 says that a similar grant has been made by "*cives, burgenses et alii probi homines de omnibus et singulis civitatibus et burgis nostri* de quorumcunque tenuris aut libertatibus fuerint et de omnibus dominicis nostris," while even in 1295 the writ of summons issued to the towns makes no mention of demesne.[2] After all, the writ for the collection of an aid, quoted above, was probably only an old form applied, without much definite meaning, to new circumstances. But in addition to this evidence from writs, we have lists of the boroughs whose representatives were summoned. This supplies us with both positive and negative evidence, for we are able to gather the names of many boroughs which sent members, though they were not in ancient demesne; while we miss the names of

[1] Stubbs, "Select Charters," p. 486. [2] Ibid.

many which we know from elsewhere to have occupied that position towards the king.

Grou of bor to a s in re sentat

A claim to extreme antiquity for the presence by representatives of the boroughs in the national council has been based upon certain ambiguous phrases of the chroniclers, and upon assertions advanced by the towns of St. Albans and Barnstaple, of certain privileges which had originated with their connection from very early days with the central assembly. But the former are too indefinite to form the basis of any positive theory, while the claims of the latter have been proved to be false. It is possible that some of the richer tenants-in-burgage may have attended royal councils side by side with other freeholders, and in 1213 we have a distinct assembly of representatives from towns on the demesne of the crown. The first definite instance, however, of a borough assembly for true parliamentary purposes is found in Simon de Montfort's summons, in 1265, of the representatives of a number of separately enumerated towns through the magistrates of each. This example was not lost on Edward I. In 1273 four citizens came from every city, along with the other constituent elements of the national assembly, to take the oath of allegiance to Edward in his absence. In 1282 it was Edward's definite act which

gathered into council two men from every city, borough, and merchant town, summoned on this occasion through the sheriff. In the next year twenty-one boroughs were summoned by name, by writs addressed to the magistrates of each. This however was not for taxation, but to give a colour of national consent to the condemnation of the Welsh prince David. Finally in 1295 came the perfected writ, which directed the sheriff of each county to cause the election of two members from each city and borough within his county. Thus was brought to its final form the assembly of the three estates, the Parliament of the nation.

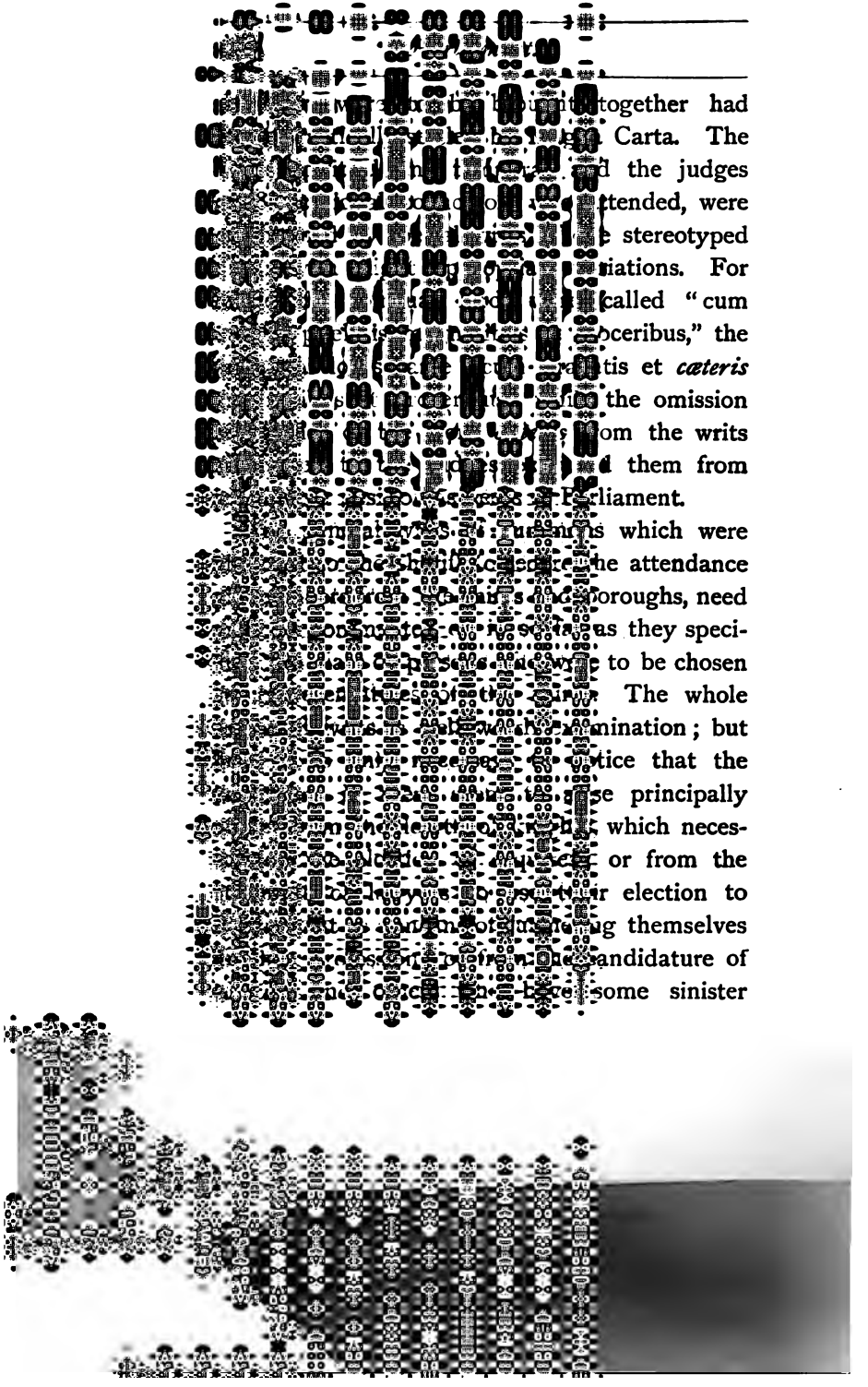
Development of the constitution and powers of Parliament.

We have now traced how the Witenagemot of the early English polity and the Great Council of the Norman and Angevin kings developed, under the influence of the principle of representation and the pressure of political necessity, into the perfected Parliament of 1295; and we have discussed the character and qualifications of the three estates of the realm there gathered together in the national representative assembly. The history of constitutional advance under the immediate successors of Edward I. falls practically under two headings. The first deals with the consolidation of the form into which Edward had succeeded in moulding the heterogeneous

design which may be served by their presence in the national assembly.

The writs having been issued forty days in advance of the period fixed on for the assembling of Parliament, time was thus allowed for the election of members for both shire and borough.

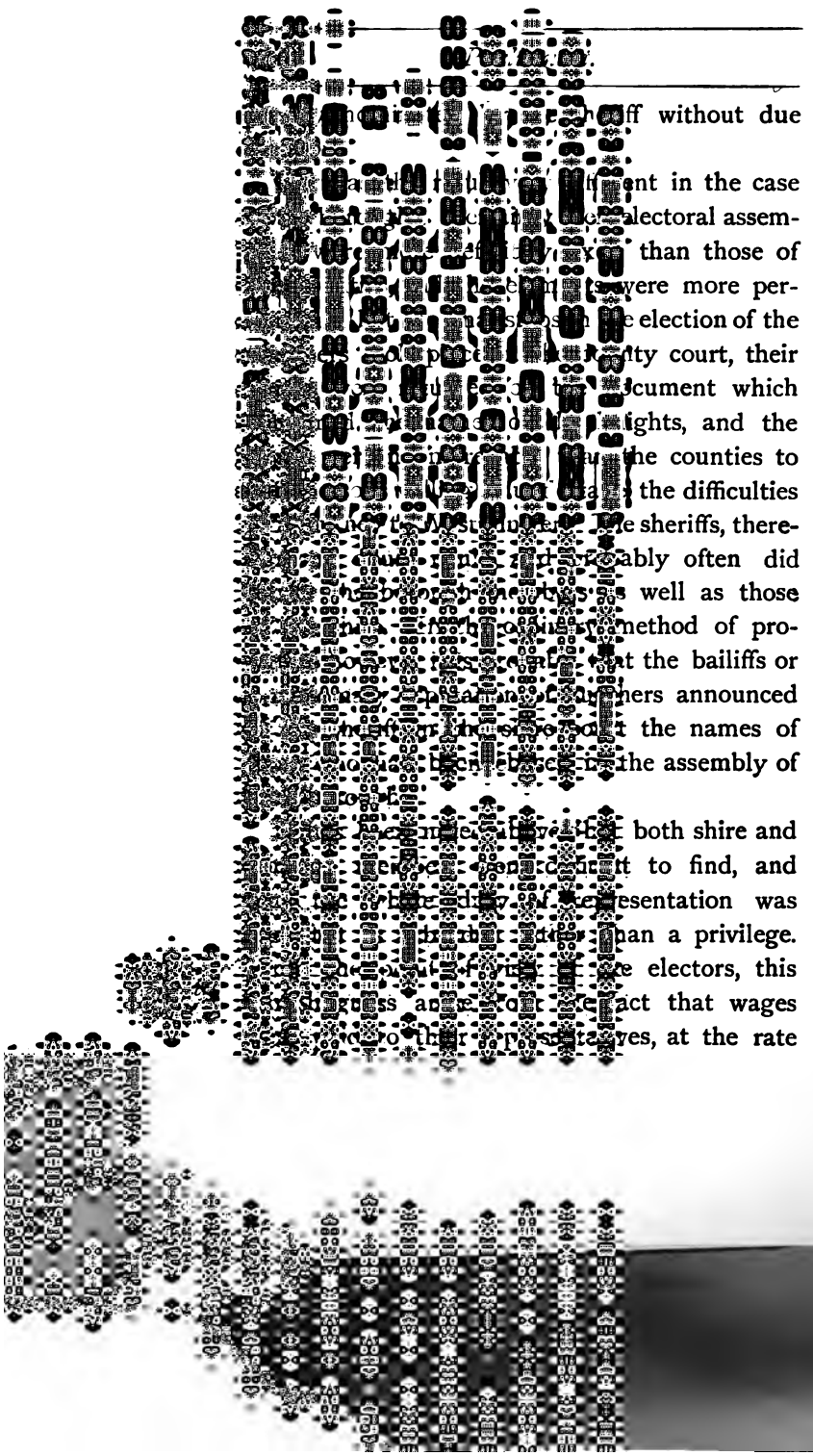
The former were elected in the monthly session of the county court, from which by the fourteenth century most persons of position in the shire had obtained the privilege of absence. The sheriff, therefore, had to issue a special summons for a parliamentary election; and this fact practically placed the election in his hands, for either he could collect a body of his friends who would vote in accordance with his wishes, or by omitting to issue any summonses at all, he could return his two candidates unopposed. To this he was helped by the fact that representation was at first regarded as a burden, and there was considerable difficulty in finding willing members. This evil was apparent at a very early date; for in 1372 we find a statute which forbids the election of lawyers and the candidature of sheriffs, while in 1376 a petition is presented, praying that the knights might be chosen by common election from (*de les*) the better folk of the shire, and not



design which may be served by their presence in the national assembly.

The writs having been issued forty days in advance of the period fixed on for the assembling of Parliament, time was thus allowed for the election of members for both shire and borough.

The former were elected in the monthly session of the county court, from which by the fourteenth century most persons of position in the shire had obtained the privilege of absence. The sheriff, therefore, had to issue a special summons for a parliamentary election; and this fact practically placed the election in his hands, for either he could collect a body of his friends who would vote in accordance with his wishes, or by omitting to issue any summonses at all, he could return his two candidates unopposed. To this he was helped by the fact that representation was at first regarded as a burden, and there was considerable difficulty in finding willing members. This evil was apparent at a very early date; for in 1372 we find a statute which forbids the election of lawyers and the candidature of sheriffs, while in 1376 a petition is presented, praying that the knights might be chosen by common election from (*de les*) the better folk of the shire, and not



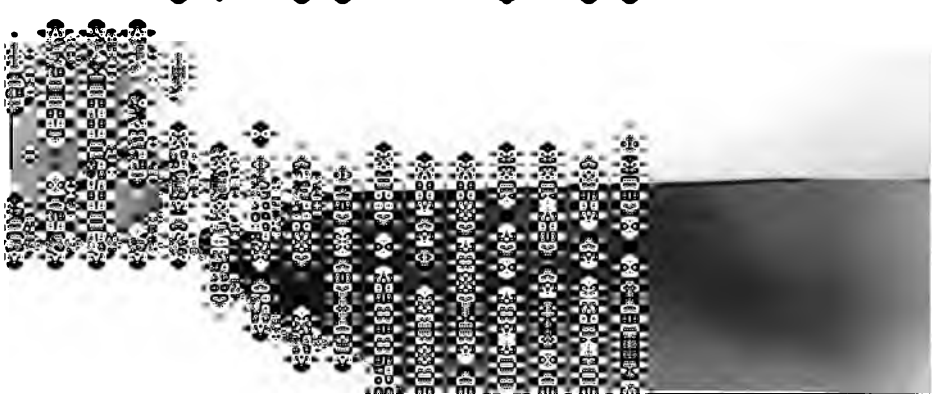
of four shillings a day to a knight, and two shillings a day to each of the borough members, both during the sitting of Parliament and for a specified time before and after. The representatives, on their side, were anxious to avoid the difficulties of travel and the neglect of private business which so long an absence entailed. Eventually the legislature had to provide that, by a process called manucaption, two sureties should be found who should make themselves responsible for the appearance of each member in Parliament.

(4) *Separation of Houses*

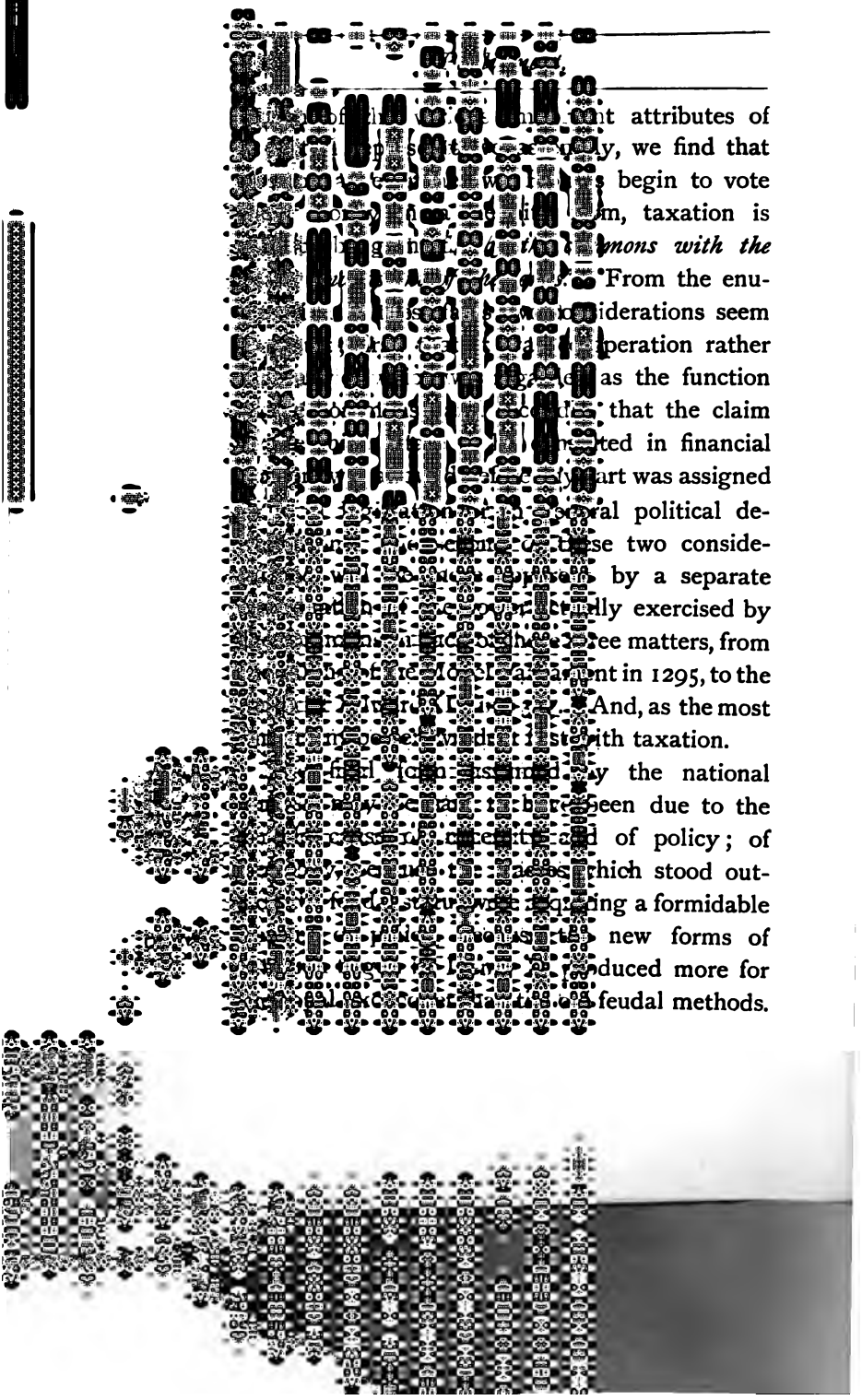
The attendance of members having been thus secured, the estates assembled, generally though by no means universally, at Westminster. It is possible that at first each estate sat by itself, while it is certain that each voted its own supplies in different proportions. Some time elapsed before the barons would merge themselves in the national assembly, or the knights of the shire discover that their interests were identical with those of the burghers. At what precise date the different estates finally arranged themselves in two Houses is a matter of some dispute. Hallam is inclined to refer the division to 1315, but it is not till 1332 that there is a distinct record of the separate session of the estates as they are at present constituted.

rhaps be gene-
acement of the
estion naturally
ry called upon
Westminster?
esentation was
no doubt the
ccentuated this
ents could in
little else than
otic statesmen,
ommons of the
heck upon the
The demand,
nts is confined
ent, when it is
ing. But when
the burden was
the law became
ctice of granting
in advance was
necessity under
n, both actually
assembly of the

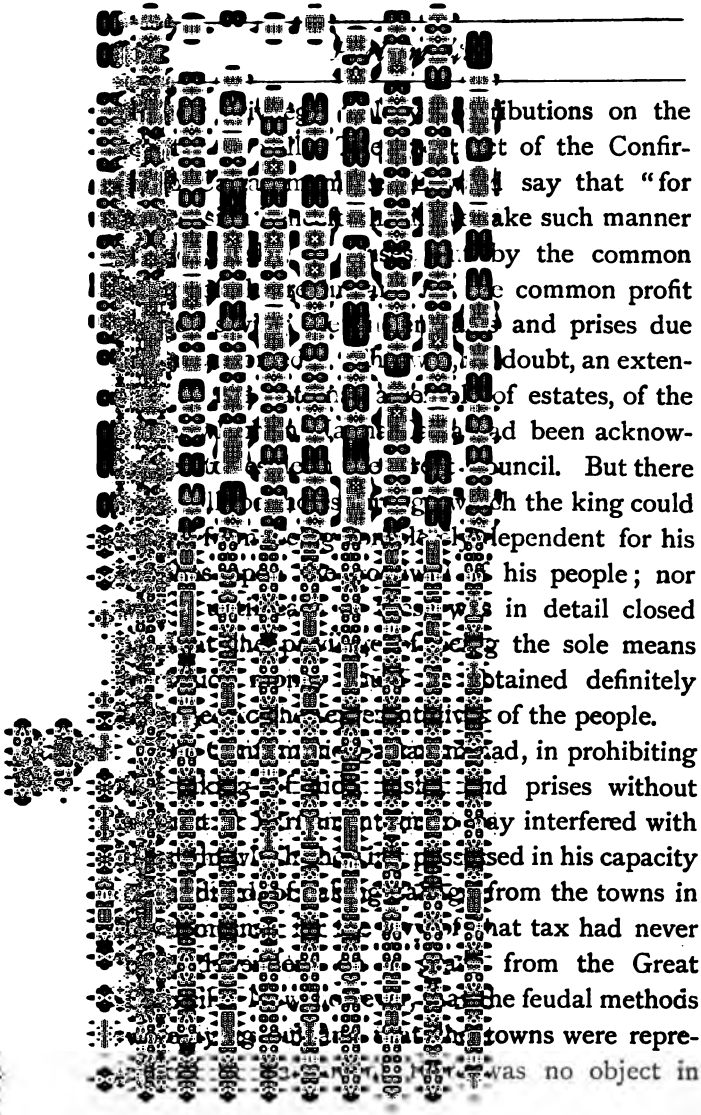
at from the first
o exist between
s. The writs of



summons directed to members of the first two estates define their function in the majority of cases as "*tractaturi et consilium vestrum impensuri*"—a mode of expression which seems to mark their theoretical position pre-eminently as counsellors of the crown. The knights and burghers, on the other hand, are to be elected "*ad consentiendum et faciendum*" what has already been determined by the common counsel of the kingdom. The function of the commons is thus shown to consist in assent, as contrasted with the advice expected from the magnates. The laws, whether in the form of Saxon dooms, or of Norman and Plantagenet charters and assizes, had ever been enacted "*with the counsel and consent*" of the central assembly. As the commons acquired a share in this assembly, the practice at first was to include them in the formula by which the assent of that assembly was expressed; after 1318 laws are enacted "*by assent of the prelates, earls, barons, and commonalty of the realm.*" But as the commons secured a more definite position in relation to the other estates, another alteration takes place in this formula; after 1327 legislation is carried out "*by assent of the prelates, earls, and barons at the request of the commons.*" Finally, when we consider the order of growth and distri-



Previous to 1295 the taxes were negotiated with each estate by a special commission issued from the exchequer. Since 1282, however, if not before, the coming change was manifest. The failure in the amount of subsidies so negotiated had led to an increased frequency in the summons of a national assembly, until it culminated in 1295 in the complete and methodical representation of all the estates. Money was now granted by each estate, at first in different proportions and in different ways, until 1334, when the proportions were settled as one-tenth of all property from the boroughs and the clergy, and one-fifteenth from the counties, the exact amount payable by each township being at the same time permanently fixed; but the method of separate negotiations with the several communities is now quite superseded. The result of this new method is seen in 1297, when a combination of circumstances, greatly resembling that which led to Magna Carta, placed Edward I. in the hands of the council of estates to which he had so lately given form, and the authority of which he had so soon attempted to overpower. Having been summoned for the express purpose of granting taxes to the king, their position would indeed be a mockery, were they to allow him, in the face



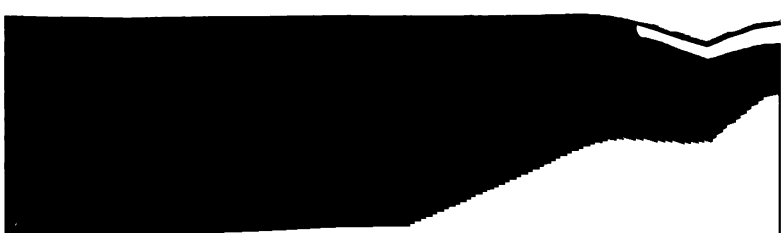
tributions on the
t of the Confir-
say that "for
ake such manner
by the common
c common profit
and prises due
doubt, an exten-
of estates, of the
d been acknow-
uncil. But there
h the king could
dependent for his
his people; nor
s in detail closed
the sole means
btained definitely
of the people.

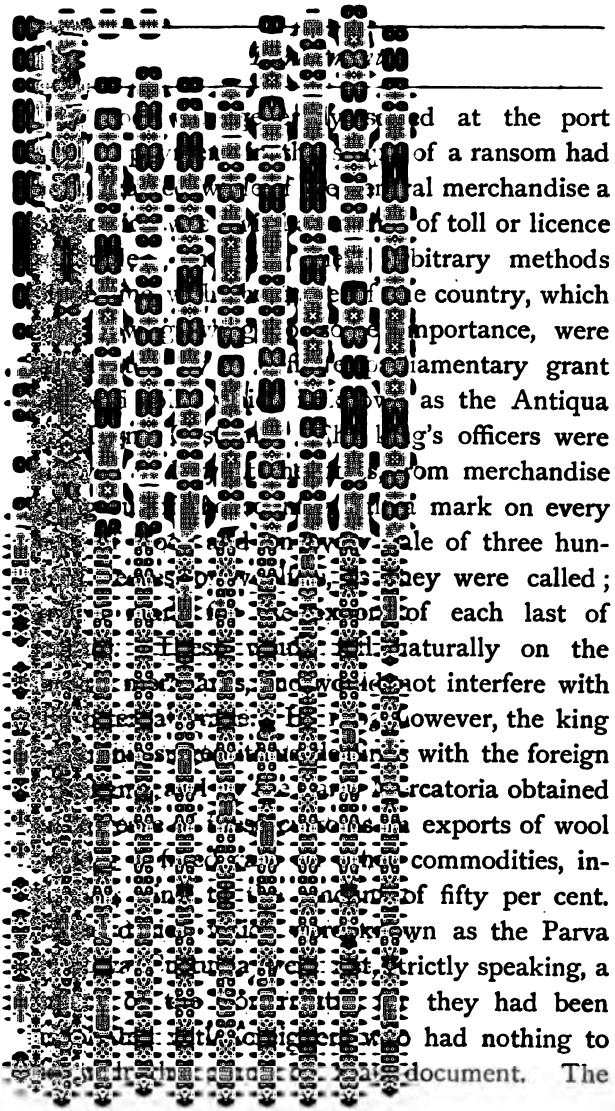
ad, in prohibiting
nd prises without
ay interfered with
ssed in his capacity
from the towns in
hat tax had never
from the Great
the feudal methods
towns were repre-
was no object in

maintaining the right. Yet, as if to preserve it, each of the Edwards once during his reign issued orders for the collection of a tallage—in 1304, 1312, and 1332. It was not likely that, as the commons felt their strength, they would permit the continuance of this anomaly. In 1340 the statute of that year decreed that no aid or charge should henceforth be made but by common assent of the various estates in Parliament. This statute is a supplement to the Confirmatio, and was intended to include every kind of tax that was not authorized by the assembly of the nation.

(β) *Customs.*

The customs demand a slightly more detailed treatment. The privilege of licensing trade had ever been held to belong to the king, as the representative of the nation in all external dealings, and as the judge between man and man. In return for this permission it had been the royal custom, previous to 1275, to deal with each of the chief commodities of trade in the country in a slightly different manner. The wine had been subject to "prisage," or the right of the king's servants to take from each wine-ship, on coming into harbour, a toll at the rate of one cask from every ship containing between ten and twenty; and two casks, but no more, if the number rose above twenty.

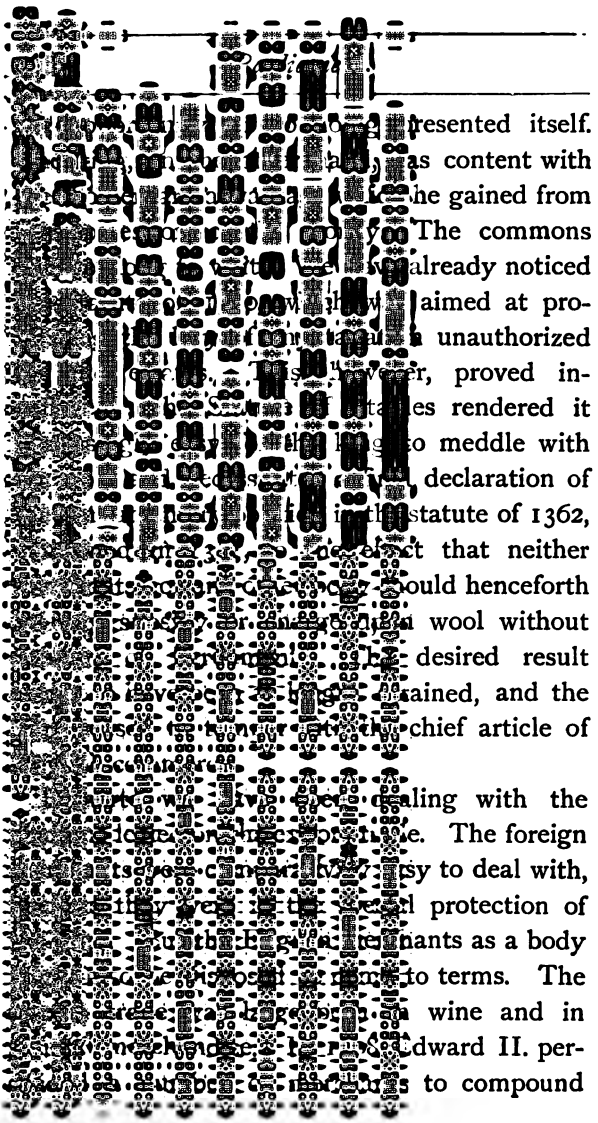




ed at the port
of a ransom had
al merchandise a
of toll or licence
bitrary methods
e country, which
portance, were
liamentary grant
as the Antiqua
g's officers were
om merchandise
mark on every
ale of three hun-
hey were called;
of each last of
naturally on the
not interfere with
owever, the king
s with the foreign
rcatoria obtained
exports of wool
commodities, in-
of fifty per cent.
own as the Parva
t, strictly speaking, a
they had been
o had nothing to
document. The

lords ordainers in 1311 made short work with these increased customs, but they were restored by Edward II. on his recovery of power in 1322, were confirmed on Edward III.'s accession, after which time they became part of the ordinary revenue of the crown, and were transformed into a parliamentary grant by the Statute of Staples in 1353.

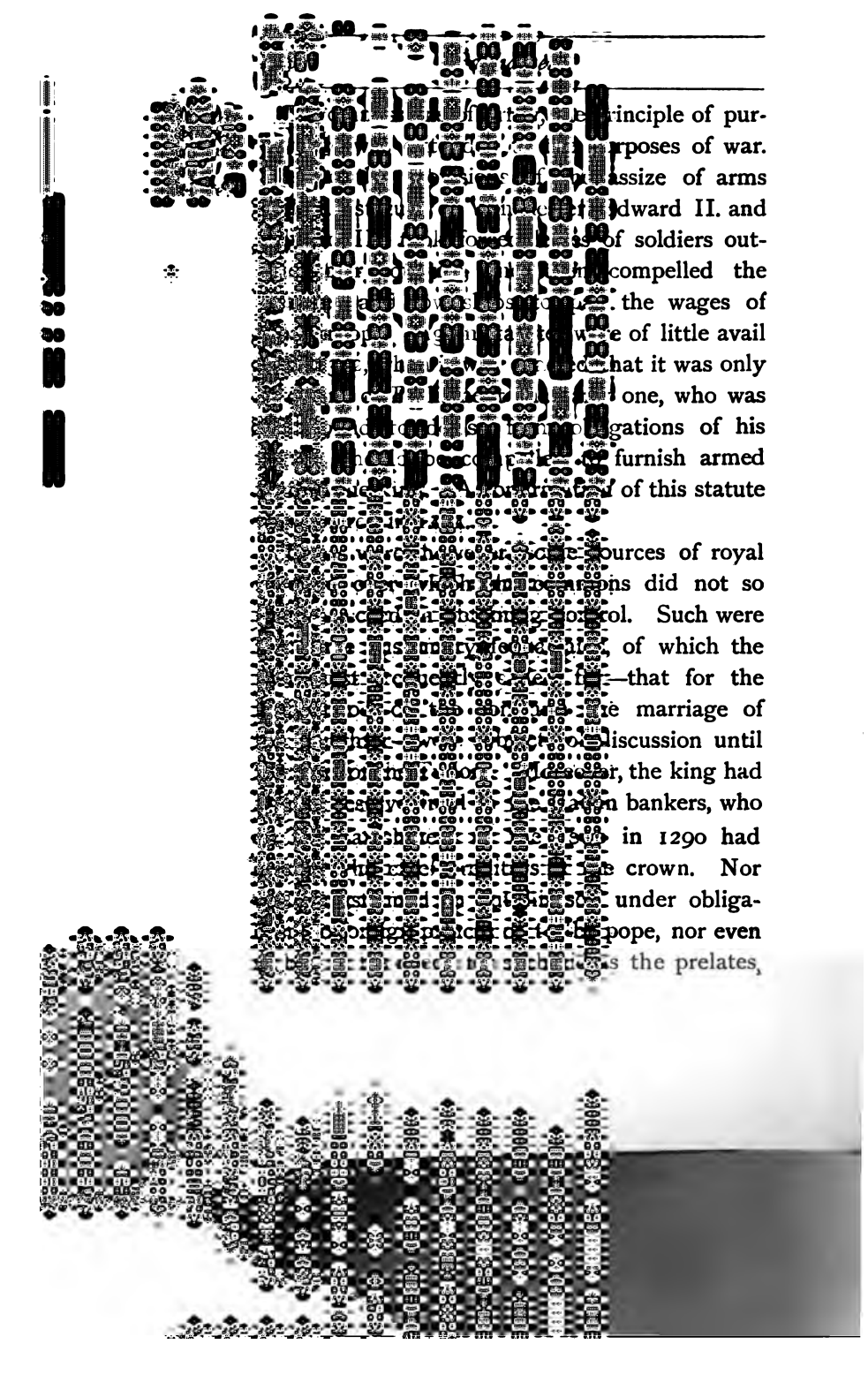
But this had little effect upon Edward III.'s financial dealings. The institution of staples, which restricted the sale of wool to certain towns in which it was collected, had been begun by Edward I., and had made it very easy to tamper with that important article of commerce. The Statute of Staples merely fixed the number of the staple towns, and placed the whole system on a more permanent footing. It was the enthusiasm roused by the French war that enabled Edward III. thus to transgress the Confirmatio, and to tax the country by secret negotiations with the merchants without going to Parliament at all. The commons pursued a policy of considerable skill. At their next session they generally authorized the exaction which had been made without their assent, judging that, if the right of granting the subsidy now passed unquestioned, their demand to withdraw the grant could not well be resisted when



for the royal right of prisage by paying a definite duty of two shillings on every tun of wine which they brought into the country. No further step was taken in this direction until 1347, when, during Edward III.'s absence in France, the council, under his son Lionel of Antwerp, agreed with the English merchants that they should pay a duty of two shillings on every tun of wine, and sixpence on every pound of general merchandise. With this irregular exaction Parliament dealt as with all others. In 1373 it was formally granted for two years, and thenceforth became a regular portion of the royal income under the name of tunnage and poundage.

(γ) *Purveyance.*

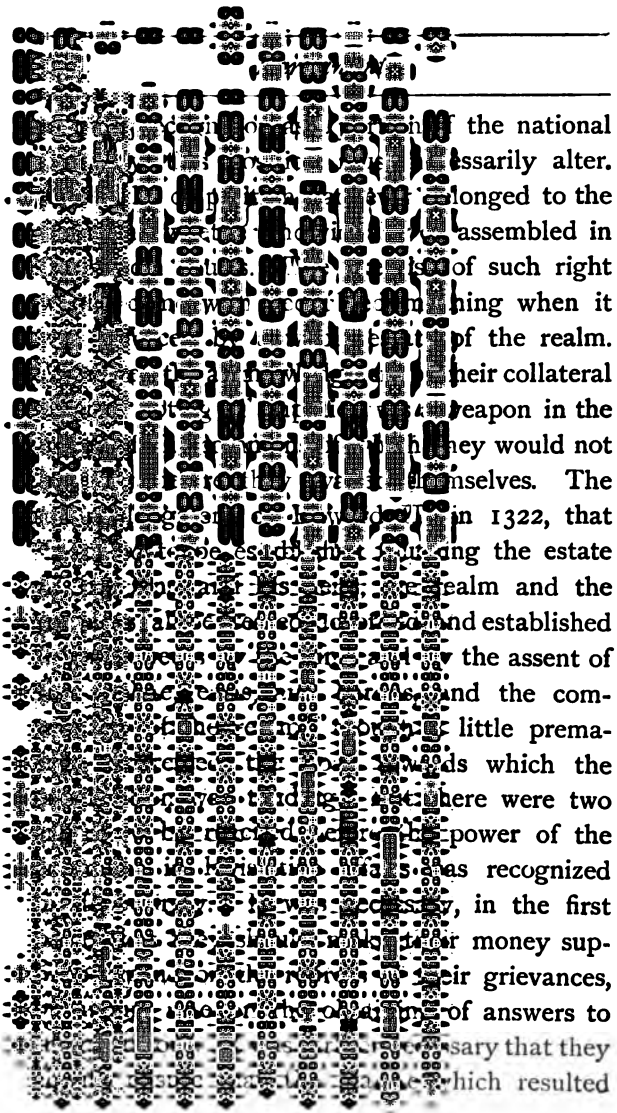
Besides these exactions, there were other means of oppression open to the king. The first of these consisted in purveyance, or the right of the king, in the journeys of his court through the country, to the use of his subjects' goods. This had been a right from time immemorial, but the size, extravagance, and ubiquity of the court of Edward III. rendered it peculiarly burdensome in his reign. Despite numerous legislative enactments, this abuse remained unchecked until 1362, when it was by statute abolished, except for the personal wants of the king and queen.



the monasteries, and other corporate bodies were disposed to accord him. And, lastly, the votes of the clerical tenth scarcely came under the Confirmatio. As long as the king chose to regard the clerical grants as free gifts, it was impossible for the commons to interfere.

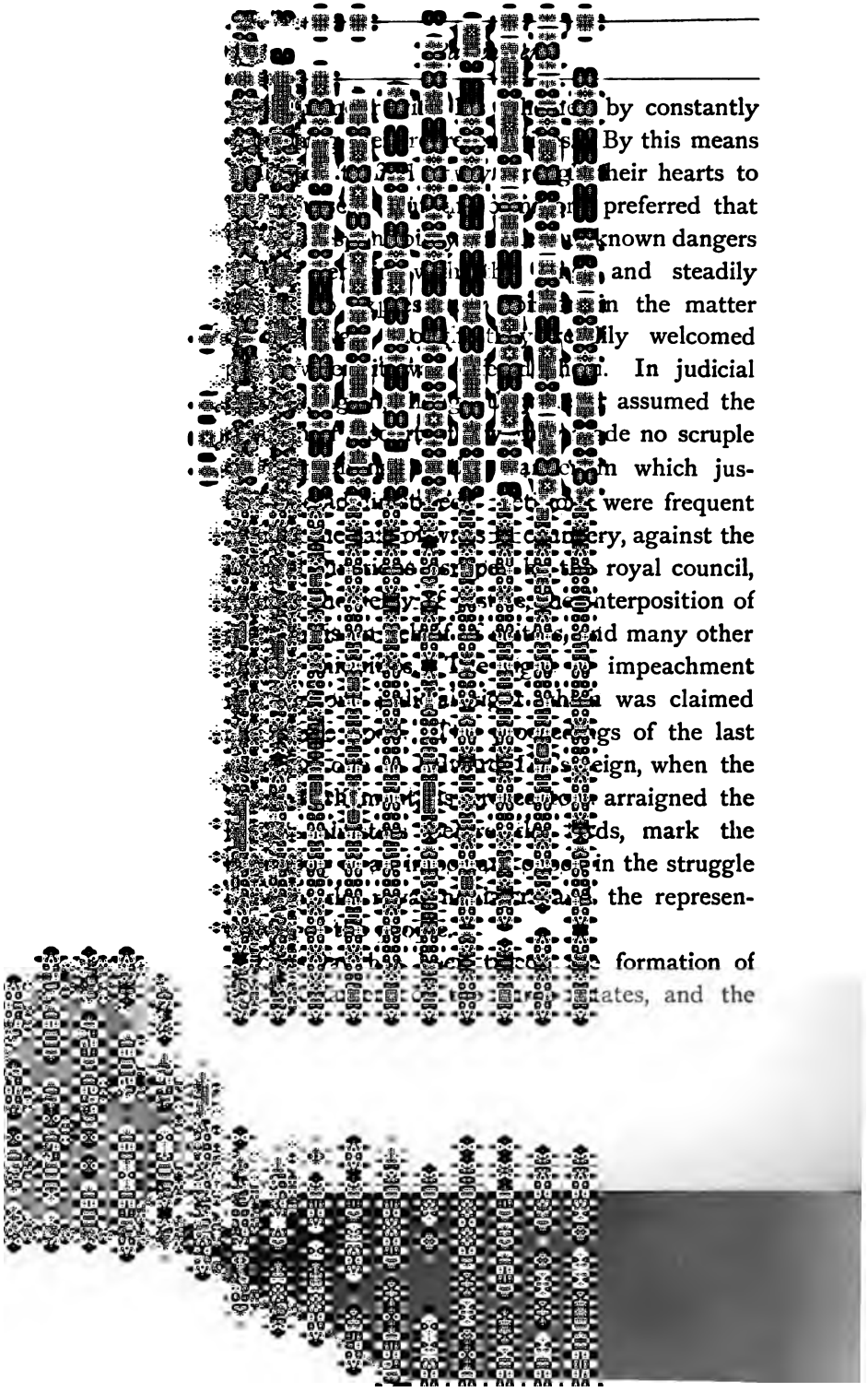
(2) *Legislation.*

In matters of legislation the chief authority lies with that portion of the community which exercises the right of initiating measures. In early times alterations of the law are a formidable matter, so that though we find almost all modifications of existing legislation previous to Edward II. initiated by the king or his council, the king at the same time had the power of issuing ordinances which were in theory temporary explanations of the law as it stood. Hence, though we may distinguish between a statute and an ordinance by saying that the former necessitated the concurrence of the three estates for its enactment or abrogation, whereas the latter was issued by the king through his council, yet in actual fact we find the two to have often been confused. As late as 1290 the commons were considered as having no part or lot in legislative measures; for the statute of Quia Emptores was passed by the magnates in that year before the commons were summoned to assemble. But as the third estate obtained in-

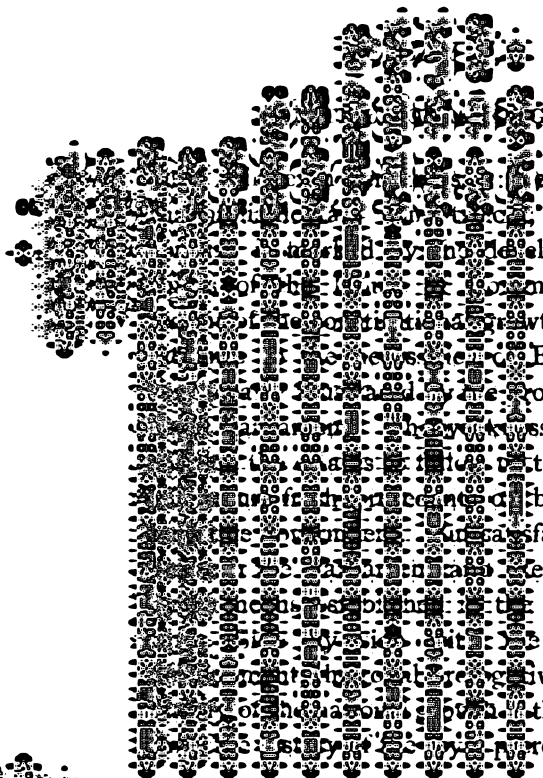


should be a direct answer to the petition which it was supposed to embody. The first stage was reached when the commons adopted the method of putting off their vote of supplies until the last day of the session. Of this the first occasion is in 1339. The second stage was not reached until late in the reign of Henry VI., when the form of bill was substituted for that of petition.

The right of deliberation and assent in matters of general political concern had ever been an acknowledged attribute of the national council; but not such as required the presence of the greater portion of that body for its due recognition. The principle enunciated by Edward I. in 1295, that "what touches all shall be approved of all," would seem to include this right also for the successors of the feudal gathering of tenants-in-chief. In the Parliaments both of 1301, the celebrated Parliament of Lincoln, and in that of 1309, we find the commons taking an active part in the presentation of a list of grievances which included matters of general welfare. It is, however, to the wars of Edward III. that we can refer the first definite recognition of the commons' rights in this respect. With the object of gaining support for his wars, Edward pursued the policy of keeping the nation in



entrance of the commons on their career of victory. Their most important privileges have been asserted and won ; the acquisition of others, necessary to the existence of a vigorous national rule, but subordinate to those which have been thus hastily sketched, is a mere question of time. It will be the object of the succeeding essay to show how the powers thus snatched as it were by accident from the crown, grow and develope into well-ascertained and clearly defined constitutional rights.



SHIP.

foundation of
the fourteenth
development of the
mons. The full
growth, due in great
Edward III., is
proceedings of the
ss of Richard II.
their advantage,
behalf of repre-
factory relations
monarch were
fourteenth cen-
constitutional
ve grew. "The
thus inseparable
rogative." Had

Richard II. been a man like Edward I., or even like Edward III., a collision might have been by mutual concessions, averted. Richard's ill-advised and premature attempt to formulate the principles on which Edward III. had acted, and to establish an absolute government, was doomed to failure. His temporary success showed how fragile were the supports upon which the constitution, as yet barely a hundred years old, rested. His alienation from all the political classes by his arbitrary acts, and by the suspicion of his sympathy with the objects aimed at by the villeins and the Lollards, enabled Henry of Lancaster to come forward as the representative of the widespread discontent. Having secured a leader, the Parliament, supported by the Church, deposed Richard and chose Henry king. A great constitutional revolution had taken place; the nation had deposed one king and had acquiesced in the accession of another. In doing so, Parliament on the one hand ensured constitutional progress, on the other hand imposed a definite check on the hopes of the villeins, and the more revolutionary schemes of the Lollards. The threatened destruction of the constitution was averted by the accession of Henry of Lancaster, and the postponement of questions "between the labouring and propertied

The revolution of 1399.

[illegible] ns between the [illegible] e when the last [illegible] had died away, [illegible] England.

[illegible] f the revolution [illegible] nly enabled the [illegible] xtent the rights [illegible] ntee of further [illegible] William III. [illegible] iamentary title. [illegible] revolution the [illegible] minated in the [illegible] rge III., under [illegible] and with means [illegible] stablishing, each [illegible] e times, a strong [illegible]

[illegible] udors, it became [illegible] s which Richard [illegible] entury too soon. [illegible] entury the baron- [illegible] aristocratic and [illegible] to look to the [illegible] r political guid- [illegible] ule administered [illegible] s in after-times,

[illegible] by S. R. Gardiner

to respect the externals of the constitution, to allow development in accordance with the wish of the people as expressed in Parliament, but at the same time able to repress disorder at home and to give England peace abroad.

The Lancastrian rule, though promising in its opening years, was on the whole a constitutional disappointment. The foreign policy of Henry V., and the weakness of Henry VI., gave an opportunity to the great lords to illustrate their selfishness, their personal rivalries, their overgrown power, and the ever-increasing divergence between their interests and those of the rest of the people. During the latter half of Henry VI.'s reign anarchy spread over a great part of the country. The political education of the English nation was not sufficiently advanced to enable it to carry out a system of self-government, nor strong enough to control the insubordination of the aristocratic elements of society. This insubordination culminates in the Wars of the Roses, which brought about the downfall of a dynasty personally incapable of giving to the nation the order and good administration it demanded.

The Tudor government gave to the body of the people protection of life and property, a firm administration of justice, and a foreign policy eminently popular. Above all, the House of

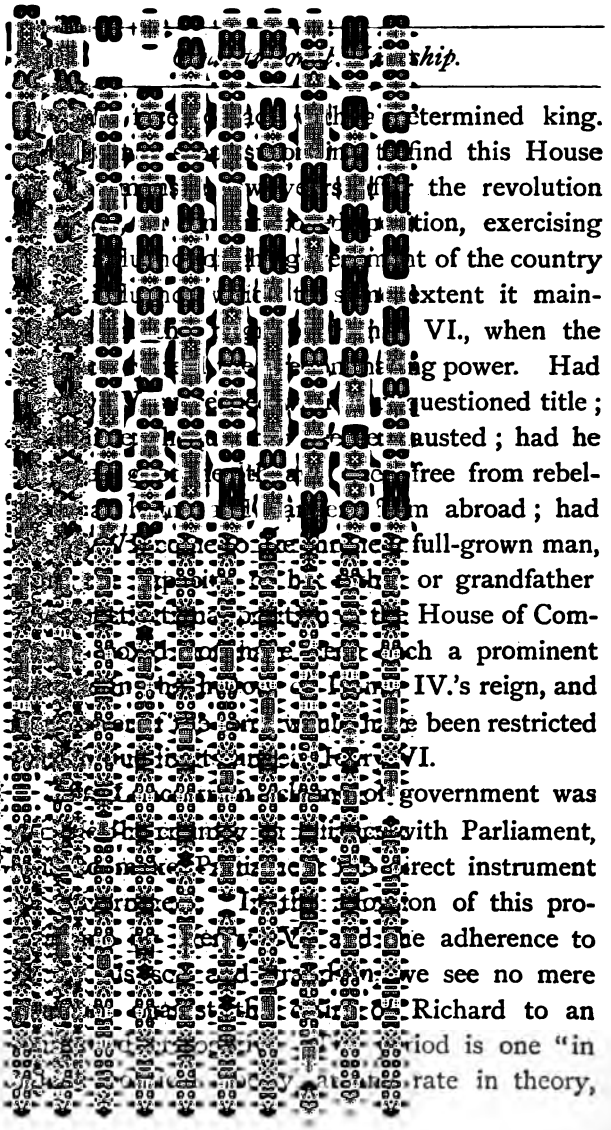
strengthen itself
on between Par-
ve, prematurely
fought out and
ury.

forward as the
the adoption of
one; as the sup-
ment to rights
entury. Parlia-
time triumphed
e Lancastrians
f of the fifteenth
a constitutional
the Lancastrians
e declaration of
st Parliament of
uld be governed
and consent;"
of the civil war
ak than uncon-
ancastrians was
the history of
constitutional
h Houses assert
the House of
tes are passed
electors and of

members of the House of Commons. Parliament is more busied with enforcing rights claimed from the crown in the previous century than in gaining new ones, and though many of these rights are little heard of during Yorkist and Tudor times, they formed important precedents for the leaders of the parliamentary opposition to the Stewarts. Hence, though it is true that the fifteenth century is not a period of constitutional development; yet under the Lancastrian kings rights previously acquired were firmly established, and placed on too secure a foundation ever to be in danger of being again successfully attacked.

In the attempt of the Lancastrians to govern England constitutionally, in the results of that attempt upon Parliament, and in the causes of its failure, the history of mediæval constitutionalism is comprised.

With the accession of Henry IV., "the experiment of governing England constitutionally seemed likely to be fairly tried." The events of Richard's reign had clearly demonstrated, not only the selfishness and faithlessness of the nobles, but also the very insecure foundations on which the power of the House of Commons rested, its dependence on leaders, and its powerlessness when, deprived of those leaders, it was



rate in theory,

reached its highest point during the Middle Ages;"[1] and the Lancastrian scheme was a definite attempt to put into practice a view of the English constitution which implied a belief that the English people were in an advanced stage of political development.

As a matter of fact, liberties were given to the nation which, as events showed, it was unable to appreciate or to use. Nevertheless, the effort of the Lancastrians was honest well meant, and, till the period of civil war, faithfully adhered to. Throughout the whole period no attempt is made to impose taxes without Parliament, no sign is given of a wish to return to the unconstitutional position of Richard II. Great freedom of deliberation is enjoyed by both Houses. The commons interfere with all parts of the administration; they are consulted on matters connected with both home and foreign affairs. These illustrations are sufficient to show how close was the alliance between the Lancastrians and Parliament. We will now proceed to consider how that alliance was brought about.

In the early days of the fifteenth century Parliament was by no means looked upon as

[1] Fortescue, "The Governance of England." Introduction by C. Plummer, p. 3.

[illegible] the state. A [illegible] ssary during the [illegible] and the execu- [illegible] er by the kings [illegible] by the council [illegible] ess of a king. [illegible] powerful engine, [illegible] ard II., was re- [illegible] icion by Parlia- [illegible] to the reign of [illegible] reat prominence [illegible] I. It became in [illegible] nent council, and [illegible] d by Edward I. [illegible] rcising with the [illegible] s wielding exten- [illegible] wers, it naturally [illegible] at Parliamentary [illegible] the Parliaments [illegible] tempts were made [illegible] ecure the nomina- [illegible] me to restrain the [illegible] ts wide, indefinite, [illegible] s, was formulated [illegible] urt of Chancery, [illegible] was permanently [illegible] As the interests [illegible] council and the

Court of Chancery were identical; the frequent opposition of the commons, from Edward III.'s reign to that of Henry VI., was directed against the judicial powers of both bodies. With the accession of Richard II., the Privy Council, as it was then called, entered upon a new period of its history. It was obvious that as Parliament grew stronger, frequent collisions would take place between the legislative body and a council exercising large and undefined executive powers and responsible only to the king.

The council itself took advantage of the minority and the indolence of Richard II., increased its functions and grew more powerful; while Parliament endeavoured, at times with success, to control the nomination of the members of the council, who are now appointed annually, bound by special oath, and receive fixed salaries. Instead of being "subordinate to, it has become a power rather co-ordinate with the king," and tended to control the prerogative. If Richard had been successful in establishing a despotism, the council would have occupied a position such as it held under the Tudors—"feeble against the crown, as it was mighty against every one else."[1] His failure brought forward again questions which had been pressing

[1] "The Privy Council," by A. V. Dicey, p. 23.

[illegible] ury: How were [illegible] ent to be recon- [illegible] of council and [illegible] he accession of [illegible] answer to these [illegible] nd had already [illegible] ted to Thomas [illegible] royal power by [illegible] and the com- [illegible] on which the [illegible] thus continued [illegible] policy of the [illegible] es.

[illegible] med him in this [illegible] weak, the crown [illegible] ad come to the [illegible] titutional prin- [illegible] ion against the [illegible] not only roused [illegible] asses, but had [illegible] of Parliament [illegible] ed all the poli- [illegible] insupportable [illegible] ution gave the [illegible] s traditions, by [illegible] evolution, to re- [illegible] dopt repressive [illegible] whose opinions

were at that epoch political and destructive rather than religious and reforming, and at the same time to govern on constitutional principles. The temporary union of nobles, clergy, and commons, brought about by the exigencies of the moment, soon broke up after the accession of Henry. His financial necessities, the frequent rebellions of a powerful section of the baronage, the continual danger from France during the early years of his reign, and his broken health in the later years, all tended to compel him to rely upon the support of the clergy and the Parliament. A policy of persecution was directed against the Lollards, who threatened the possessions rather than the doctrines of the Church. Parliament, and especially the Lower House, was completely won over by Henry's honest attempt to settle definitely the relations between the executive and legislative organs. As long as jealousy existed between the Parliament and the council, the working of constitutional government was rendered impossible. By making the executive organ, the council, work harmoniously with the legislative organ, the Parliament, *i.e.* by suffering Parliament to influence the appointment of members of the council, and by thus eliminating all jealousy between these two bodies, the Lancastrians were enabled to allow Parlia-

ment of govern-
plan is carried
for the most
and subject to
liament. This
d of mediæval

and Henry V.,
Privy Council
Henry, at the
ated a council
d seven com-
rhaps, the best
xisting between
rian times. In
the commons,
cil of seventeen,
These coun-
to obey thirty-
eir powers and
guided entirely
which was itself
te of confidence
ommons in the
ce attached by
of its control
nues the same
the later years

of his reign the council, nominated according to the wishes of Parliament, governed England. Henry V., though in a stronger position than his father, continued his father's policy. Lollardy is put down. The nobles, ever ready to quarrel with king or commons, found vent in the French war for their constant uneasiness. Henry's success abroad and his admirable relations with his Parliament at home, which implied a corresponding confidence between Parliament and the council, enabled the trial of a great constitutional experiment to be continued for some thirty years.

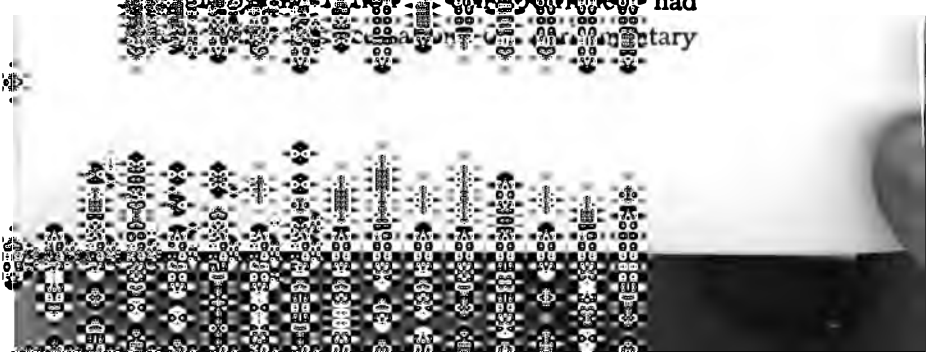
With the long minority of Henry VI. the Privy Council attained to the height of its power in the Middle Ages. During this minority the English nation had a real opportunity of testing its own fitness for self-government. Till 1437 the members of the council were nominated in Parliament, and consequently the council possessed the full confidence of Parliament. It acted not only in its ordinary capacity, but also as a council of regency exercising all the functions of sovereignty. The harmony existing between it and Parliament is proved by the enormous powers wielded by the council. Its work was prodigious. To it was entrusted financial business, considerable

nd the manage-
thority was no
with suspicion.
matters came
nsible for the
e preservation
blic peace was
disorder often
ions of private
his period be
tive, a judicial,

ry's reign—a
g, a most em-
s mainly com-
rnment of the
llustrates "the

on some knotty
ouncil refused
ncil was called.
frequently by
consisted of a
ho were not of
be regarded,"
-parliamentary
nstitution" (Trans-

Parliament cease to control the Privy Council.



body begins
der the Tudors,
nd independent
d the country.
Parliament, the
century looked
d good govern-

o make Parlia-
overnment had,
portant results
on itself. The
ee new rights
reasserted and
work continued

the hereditary
rds had been
first instance
letters patent
II., though earl-
by charter and
ays hereditary.
he Lancastrians
the House of

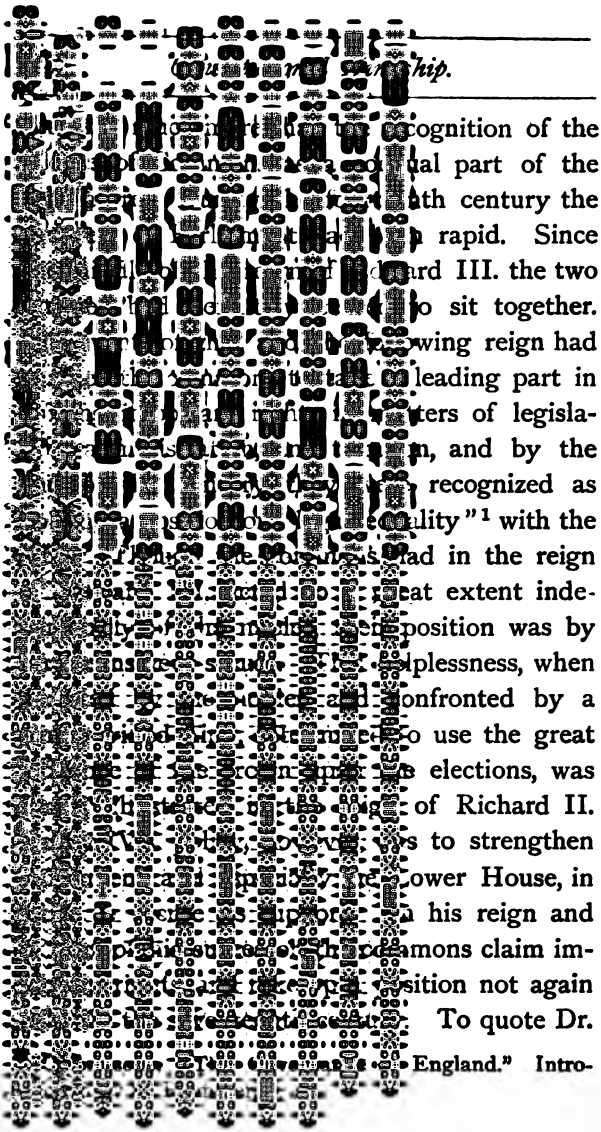
d, the reader should
es to Fortescue's

Lords as an assembly the *personnel* of which depended on their own authority. Hence, though this is in effect done long before, the hereditary right of the peers to a summons to Parliament was acknowledged, and the House of Lords became a small compact body in which the spiritual element predominated.

With considerable judicial powers, the House of Lords had the advantage of a continuous existence. Its members formed the majority in the Privy Council, and in their attendance at the Great Councils summoned to assist the Privy Council with advice "it is probable that the theory which gives to all the peers of the realm the right of approaching the king was reduced to practice." In spite of the capacity of the nobles to rule, and the influence they exercised over the commons during the first decades of the century, their family jealousies and selfish factiousness, by bringing about the Wars of the Roses, threw the whole political organization into confusion, destroyed the utility of the mediæval peerage, and left to another line of kings the task of reconstructing the House of Lords out of fresh materials.

The House of Commons.

It is in the position and powers of the House of Commons that we can find greater attempts at expansion, though these attempts do not



cognition of the
al part of the
th century the
rapid. Since
ard III. the two
o sit together.
wing reign had
leading part in
ters of legisla-
n, and by the
recognized as
quality"[1] with the
had in the reign
great extent inde-
position was by
plessness, when
confronted by a
o use the great
elections, was
of Richard II.
s to strengthen
ower House, in
his reign and
mons claim im-
sition not again
To quote Dr.

England." Intro-

Stubbs, "Never before and never again for more than two hundred years were the commons so strong as they were under Henry IV."

In 1401, taking advantage of the financial needs of the king, they demand that redress shall precede supply. In 1404, on their request, a sum of money was appropriated to the defence of England, and the royal household was attacked. In the same year they claim the right of freedom from arrest. In 1406 they gain the right of having the royal accounts audited, and in 1407 that of originating money grants. In 1406 and 1410 two important acts were passed, to regulate the county elections, and to check the undue influence of the crown, the great lords, and the sheriff on the choice of representatives for the House of Commons. In Henry V.'s reign the commons still further regulated the county and borough elections, and in 1414 secured a "great constitutional boon," by gaining the assent of the king to their petition, that from henceforth "statutes be made without altering the words of the petitions on which they are based." From 1407 their right to deliberate on all matters of public interest was recognized. The instances of matters of domestic policy being treated by them are numerous. In Henry IV.'s reign they interfered

tion. Questions
were frequently
ssed. Henry V.
ell as the lords,
peror Sigismund
nted his services
enry V.'s reign
o labour for the
1425 the three
f Gloucester to
m the accession
gradually ceased
an influence on
country as they had
V. The appoint-
liament to carry
king's minority;
f the great lords
in the elections;
after 1437, of the
ended to relegate
s prominent than
e earlier years of
some extent they
he troubles which
importance which
inue to take no
country.

In 1429 they are allowed to have freedom from arrest, though this right is not established by statute, and in 1433 they obtain definite recognition of the right to immunity from molestation for "members of either house coming to Parliament or council by the king's command." In 1430 an act was passed restricting the right to vote in county elections to the forty-shilling freeholders, and in 1432 and 1446 other regulations were made in the same definitive spirit. *Privilege of Parliament.*

In this reign, too, the commons began to introduce the practice of legislating by bills in place of petitions. We also find them dealing with matters of general interest. In 1426 they urge that Beaufort and Gloucester should be reconciled; in 1432, by a petition, they secure Beaufort from the risks of præmunire; in 1433 they ask for the issue of a "proclamation for the suppression of riotous assemblies;" in 1450 they impeach Suffolk.

Jack Cade's rebellion in 1450 illustrates the helplessness of the government. Suffolk's impeachment, though constitutional in form, was rather the first act in the drama of the quarrel between York and Lancaster, than a legitimate step in the history of the growth of the House of Commons. The way in which it was evaded *House of Commons becomes oligarchical.*

[illegible] and council in [illegible] ked by public [illegible] family interest

[illegible] e too imperfect [illegible] garded as fair [illegible] ut the country [illegible] hted, and that, [illegible] knights of the [illegible] nfluence of the [illegible] the House of [illegible] Duke of York, [illegible] ke Richard II., [illegible] secure a House [illegible] elf, and opposed [illegible] 1451 freedom of [illegible] nce of the king, [illegible] mas Young, a [illegible] who had brought [illegible] Duke of York [illegible] e duke himself [illegible] ons to freedom [illegible] aker Thorpe, a [illegible] A few months [illegible] an's was fought, [illegible] gun, and parlia- [illegible] s.

[illegible] astrians to rule

constitutionally had a decidedly beneficent (and permanent) effect upon the advance of the power of Parliament, and even in the reign of Henry VI. we have seen that the commons to a great extent maintained their position.

Though at first sight it might seem, from the definitive statute of 1430, and from the loss of all independence of the Parliaments which sat during the later and more troubled years of Henry VI., that things went back; it is nevertheless true that the seeming retrogression, as seen in the invasion of the claims of the commons to liberty of speech and freedom from arrest were only temporary, due to the special circumstances of a time when illegal acts superseded constitutional rights; and that on the whole Parliament maintained its position and privileges till the year 1450. It is clear, from the events and legislation of the reign, that a "growing value is attached to a seat in the House of Commons." Even from the opening of the civil war to the accession of Henry VII. the leaders on both sides were always anxious to get the recognition of Parliament for their acts or claims. Richard III. received the crown at the invitation of the representatives of the three estates. It is true many of the rights claimed by the commons were claimed prematurely. The

in 1376, 1386,
l the reign of
iating supplies
t of appointing
do not become
eign of Charles
berty of speech
ess in the six-
e seventeenth
one back under
dents for future
gained, when
m the general
er years of the
country.

to make Parlia-
government had
nced it became
had attempted
and yet, from the
were bound to
y. Henry IV.,
men struggling
sooner or later get
exercising exhaustion
Beaufort's death,
ministration and
ny. The catas-

trophe, however, does not come until France is lost, and York is put forward as the heir. The fall of Henry and the house of Lancaster was due nominally to the superior claim of the house of York to the throne. Just as the personal wrongs of Henry of Lancaster were made the excuse for the revolution of 1399, so the claims of the legitimate heir furnished the reason for the deposition of Henry VI.

No superior claims of birth could, however, have been successful against a dynasty which had for three generations occupied the throne, had not the Lancastrian government shown extraordinary weakness. Dr. Stubbs has characterized the Lancastrian period as "the trial and failure of a great constitutional experiment;" and the failure of Henry VI. to govern England after Beaufort's death was so obvious, that men saw in a change of dynasty the only possible remedy for the existing state of things. Apart from the unpopularity of the queen, the want of confidence in the ministers, and the conspicuous failure of an unpopular foreign policy, the weakness of the executive at home had become glaringly conspicuous.

As early as 1450, two bishops had been murdered, in addition to the rebellion of Jack Cade. Between 1450 and 1461 things went from bad

[illegible] *ip.*

[illegible] the country dis- [illegible] the presence of [illegible] increased with [illegible] lawlessness of [illegible] ct enforcement [illegible] of all govern- [illegible] eform under a [illegible] resistible.

[illegible] first beginning [illegible] al demand for [illegible] after the first [illegible] veloped into a [illegible] ies—a struggle [illegible] re faction fight, [illegible] which had been [illegible] years might be [illegible] was essentially [illegible] likely to gain a [illegible] selfish nobility. [illegible] rought no final [illegible]. Hence both [illegible] forced to have [illegible] or, which tended [illegible] urther, and ren- [illegible] impossible. It [illegible] bsworth in 1485, [illegible] re satisfied with [illegible] y that time the

nation had definitely learnt that the great lords, following the example set them by the clergy more than a hundred and fifty years previously, preferred their own class interests and personal aggrandizement to their inherited position as leaders of the commons. Deprived of the support and leadership of the Church and baronage, the nation saw that a strong ruler with wide powers was the only hope for the attainment of peace and orderly government. Henry VII. and his council were enabled to give the country that freedom from foreign aggression and internal disorder, that enforcement of justice, and that security of life and property which had been so earnestly desired during the greater part of the fifteenth century, and which were so necessary for the prosperity of trade and the cultivation of letters.

The house of Lancaster fell through "want of governance." Its fall brought about the complete overthrow of the scheme for making Parliament the direct instrument of government, and placed a check on the constitutional expansion of the commons. The "lack of governance" was an evil inherited from the fourteenth century, in which the independence of the great lords had already proved a source of danger. Ever since Edward II.'s reign, the object of the great

The
of L
ter f
thro
"w
gove
ance

(1) *F*
and
ishm
of the
lords.

nment of the
. The military
ng the hundred
ies were raised
e crown and
ds to maintain,
f retainers clad
serious evil in
dward III.'s reign
lly a definite
devised system
lication of a new
t lords to those
dward I., and
the same idea,
t. Edward III.
developed this
that the crown
rial discord, but
ns of territorial
ouse of Commons.
ir close connec-
served a rapid
nobles, side by
th and estates.
e, partly to the
dward I., partly to
æval baronage.

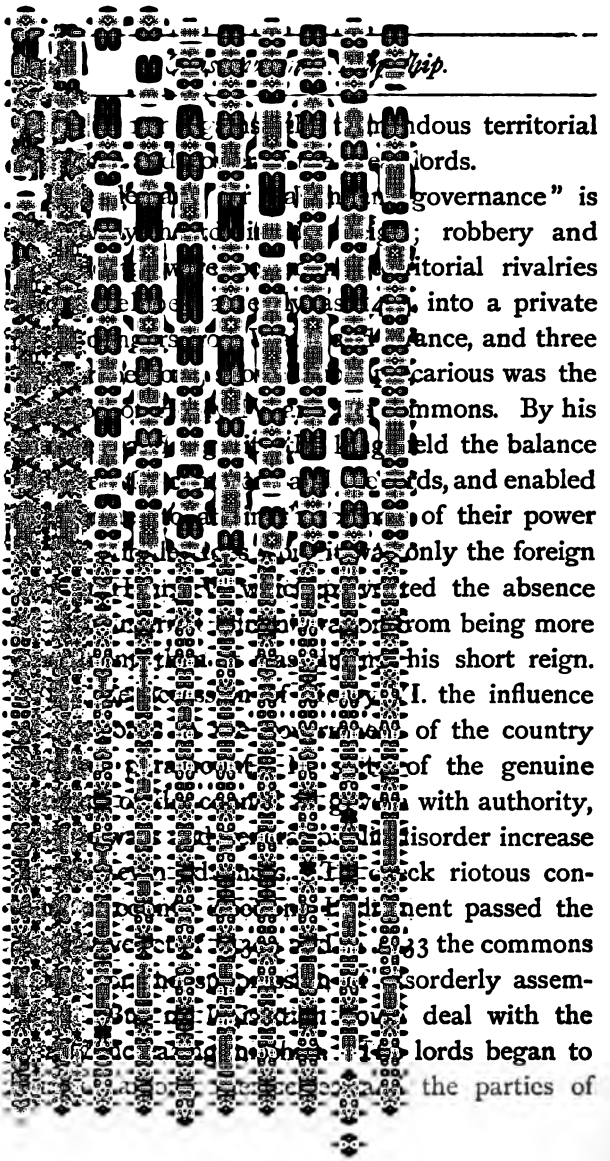
As soon as the idea of an hereditary peerage became fixed, the number of peers diminished, estates tended to accumulate into fewer hands, and the gap between the lords and commons became wider. To quote the conclusive words of Dr. Stubbs, "it is difficult to overrate the quantity of land which during the Middle Ages remained in the hands of the great nobles." "Taken in the aggregate, the landed possessions of the baronage were more than a counterpoise for the whole influence of the crown and the other two estates of the realm." The accession of Henry IV. found the great lords wealthy, exclusive, with vast estates and bands of retainers, allied to the Church, closely connected by marriage with the crown, possessed of immense local influence, and ready on every occasion to use the pernicious custom of maintenance. They no longer aspired to act as leaders of the commons, but rather desired to crush the independence of that body. The events of Richard's reign had demonstrated their selfishness, untrustworthiness, and faithlessness; his deposition had demonstrated their power.

It was soon apparent that the lords by no means approved of Henry IV.'s policy of propitiating the commons, and it seemed doubtful if the alliance between king and commons could

[illegible]

[illegible] ment of the [illegible] The military [illegible] the hundred [illegible] were raised [illegible] crown and [illegible] to maintain, [illegible] retainers clad [illegible] serious evil in [illegible] III.'s reign [illegible] a definite [illegible] vised system [illegible] tion of a new [illegible] lords to those [illegible] ward I., and [illegible] the same idea, [illegible] Edward III. [illegible] developed this [illegible] hat the crown [illegible] discord, but [illegible] s of territorial [illegible] of Commons. [illegible] close connec- [illegible] served a rapid [illegible] obles, side by [illegible] and estates. [illegible] partly to the [illegible] d I., partly to [illegible] val baronage.

53
ge
ed,
ds,
ons
rds
the
ges
les."
sions
poise
the
ession
althy,
ls of
nected
f im-
occa-
nance.
ers of
sh the
nts of
selfish-
ss ; his
r.
ds by no
of propi-
doubtful if
mons could



lords.

governance" is

; robbery and

itorial rivalries

into a private

ance, and three

carious was the

mmons. By his

ld the balance

ds, and enabled

of their power

only the foreign

ted the absence

from being more

his short reign.

I. the influence

of the country

of the genuine

with authority,

isorder increase

ck riotous con-

nent passed the

3 the commons

sorderly assem-

deal with the

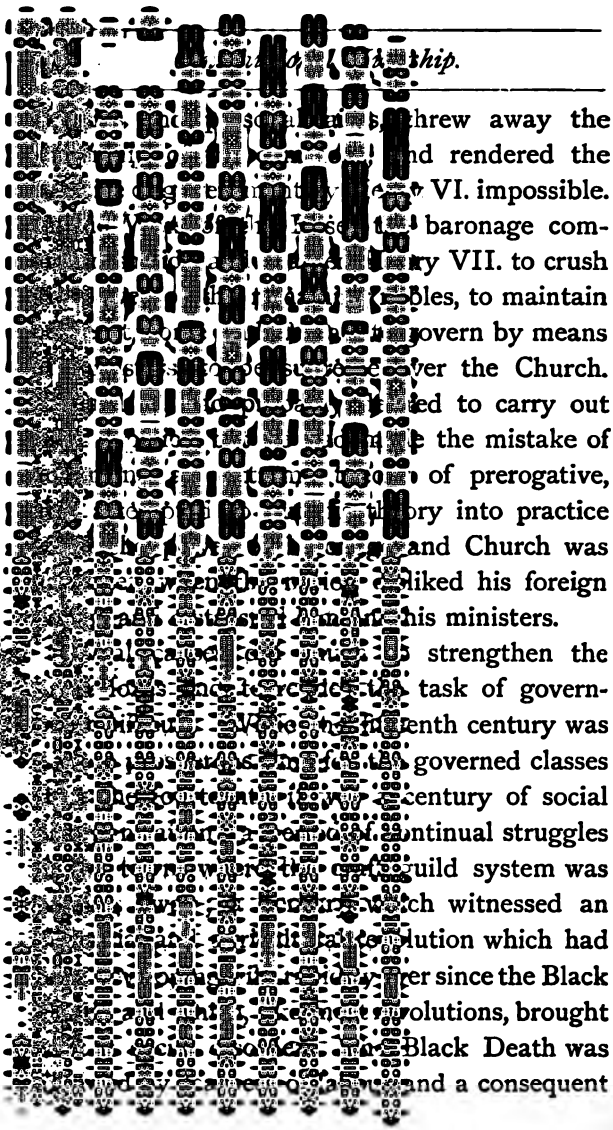
lords began to

the parties of

Beaufort and Gloucester are but a preliminary stage of the Wars of the Roses. The two parties struggled for supremacy in the council and for influence over the king, while the disorganization of the country districts assumed formidable proportions. We have seen as the reign advanced how Parliament failed to control the council; equally disastrous was the failure of the council to control Parliament by influencing the elections, and to check the growing evil of local faction. At the same time, the House of Commons became more and more composed of the nominees of great men selected for purely personal or factious purposes.

Thus the "family settlement" policy of Edward III. had results unlooked for in the fourteenth century. Instead of the crown checking the quarrels of the nobility, the nobles introduced into the royal house their own spirit of rivalry and jealousy. Instead of the crown controlling, through the nobles, the elections, the great lords were found in the later years of Henry VI.'s reign influencing the elections in opposition to the crown.

The Lancastrians had followed the "hereditary traditions of the baronage" in aiding Parliament to maintain and strengthen its position. It was the lords themselves who, by their own territorial



threw away the
nd rendered the
VI. impossible.
baronage com-
ry VII. to crush
bles, to maintain
overn by means
ver the Church.
ed to carry out
the mistake of
of prerogative,
ory into practice
and Church was
liked his foreign
his ministers.
strengthen the
task of govern-
enth century was
governed classes
century of social
ntinual struggles
uild system was
ich witnessed an
olution which had
er since the Black
volutions, brought
Black Death was
and a consequent

rise in wages, which the statutes of labourers were unable to check. The landlords, compelled to recognize the new state of things, and seeing the impossibility of making "farming with hired labour pay,"[1] began to allot out portions of land to such as could pay the rent. In this way the class of tenant or yeoman farmers was formed. But the villeins who remained on the land, finding their services more rigidly claimed than ever, showed great discontent, and in the rebellion of 1381 made their well-known attempt to get rid of all claims on them for service. Their attempt failed, but a great change in the use made of land gradually enabled them to secure the objects aimed at, and to set themselves free from their masters. This great change in agriculture was simply the gradual substitution of sheep-farming for the system of tillage which had existed since early English times.

The growing of wool had throughout the fourteenth century been exceedingly profitable and the great wealth of the landowners, in that and the following century, was very largely due to the sale of wool. This agricultural revolution, though very beneficial to the landowners, was,

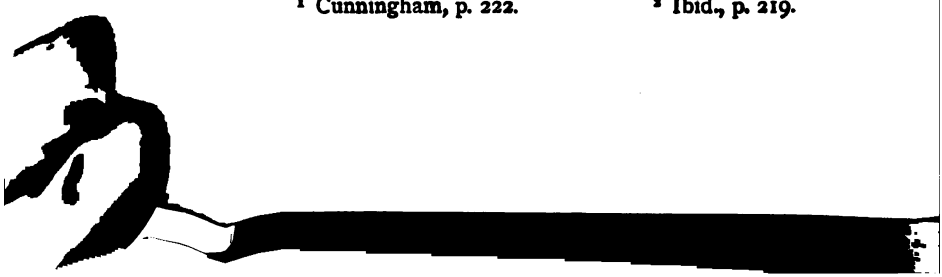
[1] Cunningham, "Growth of English Industry and Commerce," p. 196; also see bk. iii., chaps. i. and ii. for an excellent account of the revolution.

while it lasted, extremely disastrous to the poorer population of the country districts.

Sheep-farming required much less labour than did tillage, and consequently great numbers of the peasantry either flocked into the towns, or swelled the ranks of the vagrants, who, ever since the Black Death, had been a growing evil. These vagrants formed a great element of disorder in the rural districts, and their appearance coincided with the gradual break-up of the manorial system and the lessened responsibility of the lords of manors, who hitherto had performed a most useful function as the "social police"[1] in the country. The villein had declared his right to do what he liked with his labour. In the fifteenth century the lord of the manor asserted his right to do what he liked with his land.

The break-up of the manorial system, the decline of the political influence of the Church, and the ever-increasing paralysis of the central government, combined to render life and property insecure in the country districts. "Social disorders followed in the wake of industrial disorganization."[2] In a period of transition, of social reconstruction such as was the fifteenth century, the country required a clergy intent

[1] Cunningham, p. 222. [2] Ibid., p. 219.



on diminishing the sufferings of the poor, landowners not wasting their substance on retainers, but exercising a beneficial influence on the local government of the counties, at the head of the state a king and council in which was to be found the greatest administrative talent in the kingdom. Is it a matter of wonder that, under the existing circumstances, the control over the country districts gradually, though surely, escaped from the weak hands of Henry VI. and his advisers, and that local rivalries, aided by the social distress, were allowed to develop into a great and suicidal civil war?

(3) *Failure of the French war.*

These social disorders were considerably aggravated by the long continuance and ultimate failure of the French war. Henry IV., compelled by his necessities to abstain from an aggressive foreign policy, with difficulty held his own against the feudal houses. His successor plunged the nation into a tedious war, which, however unprincipled, was popular with all classes, and postponed for some forty years the renewal of internal dissensions. His brilliant successes prevented men seeing how impossible the conquest of France really was. The death of Bedford and defection of Burgundy brought home to Beaufort, and later to Suffolk and Somerset, the advisability of limiting their

ambition to the retention of Normandy and Guienne alone. The marriage of Margaret of Anjou to Henry VI., by which it was hoped that the possession of these provinces might be made secure, proved unfortunate for the Lancastrian dynasty. Her influence caused the exclusion from the council of all but her own party, upon whom fell the national wrath, when, in 1453, the final expulsion of the English took place. The loss of prestige and the damage to trade incensed the nation against the supposed authors of the failures abroad. The general resentment did much to render the Yorkist opposition successful, while the war itself had enabled the great lords to acquire in the country an ascendancy incompatible with constitutional government. Crowds of armed and liveried retainers, fortified houses, the presence of large numbers of turbulent soldiers but lately returned from the wars, together formed an element of disorder in the country which made the administration of the law well-nigh impossible. Henry V.'s foreign policy had merely postponed the unavoidable struggle between the crown and the feudal houses to a time when the great lords were in a stronger, and the king in a weaker, position. The interval of sixty years only rendered the outbreak of

disorder more organized, more general, and more intense.

It might have been expected that the House of Commons would act as a check on the great lords, and having gained apparently a strong position under Henry IV., would be able, even when deprived of the aid of that sagacious monarch, to maintain an independent attitude towards, and exercise a controlling influence over, such tendencies to lawlessness and insubordination. The strength of the commons must not, however, be estimated from the principles advanced in 1406, or, indeed, from their general position under Henry IV. "Prematurely Richard had challenged the rights of the nation, and the victory of the nation was premature."

The nation in reality was not ready for the self-government offered by the Lancastrians. Parliament was not fit to become the direct instrument of government. Owing to the circumstances of his accession, and to his constitutional leanings, Henry IV. carried on the true Lancastrian policy of propitiating the clergy and the commons, though that policy left the central power not sufficiently strong even in his day to curb satisfactorily the disorders of the times. In fact, even during Henry's reign it was apparent that the commons were strong

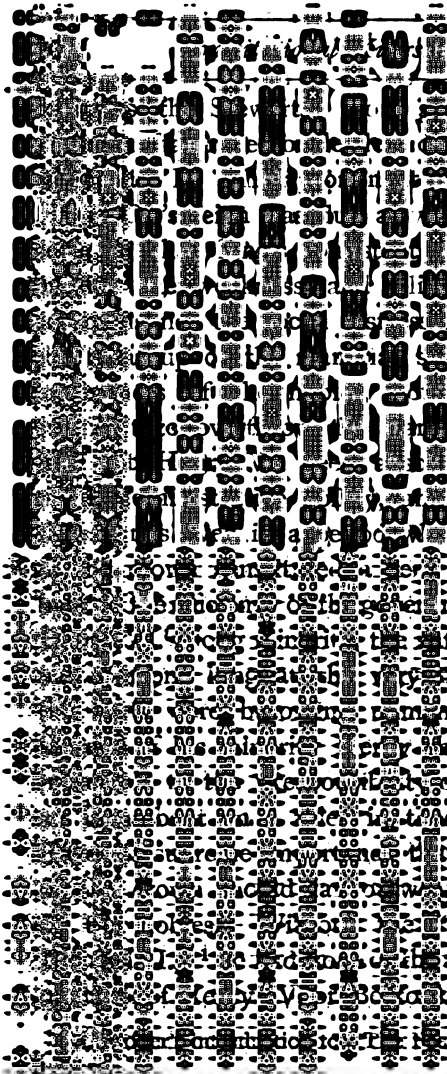
ambition to the retention of Normandy and Guienne alone. The marriage of Margaret of Anjou to Henry VI., by which it was hoped that the possession of these provinces might be made secure, proved unfortunate for the Lancastrian dynasty. Her influence caused the exclusion from the council of all but her own party, upon whom fell the national wrath, when, in 1453, the final expulsion of the English took place. The loss of prestige and the damage to trade incensed the nation against the supposed authors of the failures abroad. The general resentment did much to render the Yorkist opposition successful, while the war itself had enabled the great lords to acquire in the country an ascendancy incompatible with constitutional government. Crowds of armed and liveried retainers, fortified houses, the presence of large numbers of turbulent soldiers but lately returned from the wars, together formed an element of disorder in the country which made the administration of the law well-nigh impossible. Henry V.'s foreign policy had merely postponed the unavoidable struggle between the crown and the feudal houses to a time when the great lords were in a stronger, and the king in a weaker, position. The interval of sixty years only rendered the outbreak of

they should be
roperty of the
and towards
considerable
he prominent
up in his reign
e reign of his
ed by his in-
ns subservient
Henry IV.,
each in turn
astrian system
always showed
but with the
y" of the Lan-
ow absolutely
overnment.

partly to blame
t. They failed
ot in attacking
engthening the
mprehend that
could only be
power to make
th and breadth
lination which
at all hazards
advanced, the

commons became more oligarchical. The act of 1430, followed later by the act of 1446, by which none of the rank of yeomen were to be eligible for election to the House of Commons, illustrates their growing exclusive spirit. England was by no means ready for a system of government in many points more adapted to the nineteenth than the fifteenth century. Parliament had been given power for which it was unfit, the commons had asserted their right to privileges which they were unable to regard as fully established. The fact was, Parliament existed more for the benefit of the sovereign than it does at the present day. It was not regarded as the great controlling power in the state. Even in Henry IV.'s reign it did not meet every year. For the necessary executive and for much legislative work, the nation was accustomed to look to the king and council, with whom the real control of matters was usually found. The powers gained by the commons under Henry IV. had been premature. That they were premature the events of Henry VI.'s reign amply prove.

The civil war finally set the commons free from all dependence on the nobles, and under the Tudors they learned to assume an attitude of independence which enabled them successfully



great extent the
ing the reign
sition during
have already
pport. But
ness of the
onsequent on
tem, nor the
i have been
estrian house,
ely deficient
had not all
the poverty
serious draw-
ment. During
tion was with-
moment when
nageable. At
owed himself
of leadership,"
se days, when
t the strength
gh the power
manliness of
administrative
It is doubt-

ton Letters," vol.

less true that he inherited difficulties not of his own making. The French war bequeathed to the country by Henry V. produced exhaustion, and, ending in defeat, largely contributed to the fall of the dynasty.

The poverty of the crown and the low condition of the exchequer were other sources of weakness for which Henry was by no means responsible. Henry IV. had owned one-fifth of England at his accession, but during his reign and those of his immediate successors, the wealth and possessions of the king decreased in proportion as the wealth and possessions of the great lords increased. The charge of extravagance can hardly be brought against the Lancastrian kings. "Richard's fall initiated a long reign of economical administration," and the commons interfered not only with the administration of the royal household, but also with the state expenses. When the king was expected to provide for the internal peace of the kingdom and the due administration of justice, to defend the coasts, to support an efficient navy, to keep up the marches and to maintain Calais, which as early as 1410 had begun "to be a constant drain on the resources of England," it was perhaps to be expected that the commons should be desirous to see his private revenue on

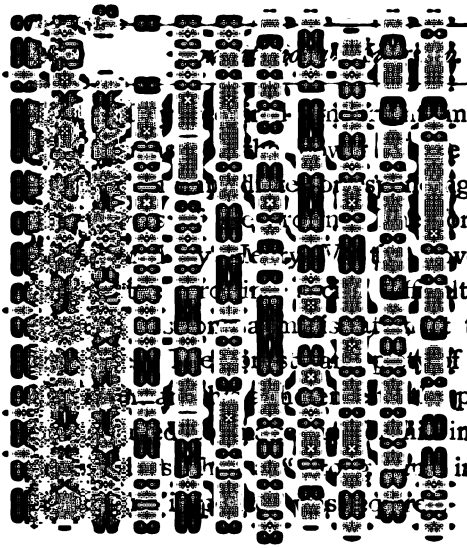
such a satisfactory basis that the king could live "of his own," and only apply to them when the national exigencies made the demand necessary. The most obvious method for placing the crown, financially speaking, on a sound footing, and for making the king sufficiently rich "to pay his own way," was to authorize a general resumption of grants of land by the crown, and to prevent the king from alienating in the future the property of the crown. This was by no means a new idea. Since Stephen's reign frequent attempts had been made to recover alienated crown estates, and to stop a practice begun by that monarch.

At the very outset of Henry IV.'s reign the question of a resumption was raised by his council. In 1404 the knights of the shire, who had already been enabled, owing to Henry's financial necessities, to take the place of the barons as constitutional leaders, proposed a resumption of "all grants and annuities given since 1367," in order that Henry should live "of his own." In 1450 an act of resumption was actually passed, and re-enacted in 1451, by which "all the grants made since the king's accession were annulled," and in 1456 a fresh act was passed. These acts were too late, and contained too many exceptions to be of any real

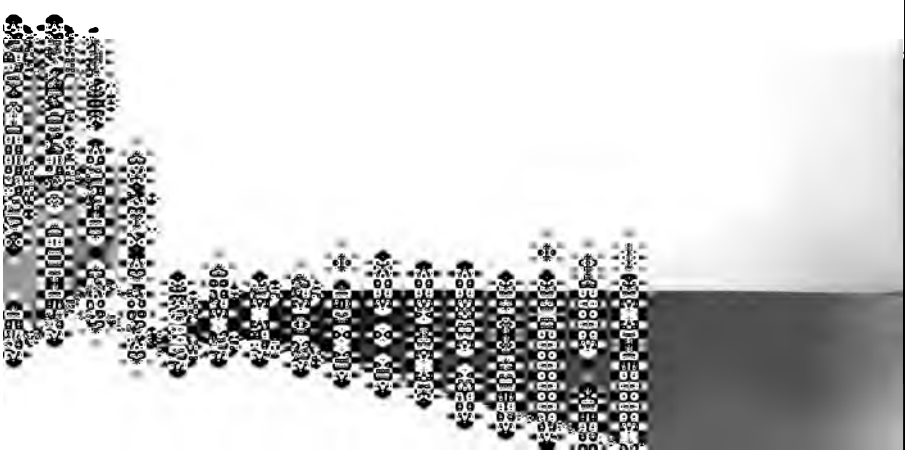
benefit to the tottering Lancastrian dynasty, while the grant of tunnage and poundage for life, made in 1453, only enabled Henry to rule for a time without Parliament. Had a thorough act of resumption been passed early in the period, had the crown lands been made really inalienable, the royal revenues would not have been inferior to those of many great nobles in the land.

General conclusion.

The Lancastrian kings, instead of having to weaken their own position and the future of their dynasty by allowing Parliament to exercise governmental functions for which it was unfit, might, with the aid of a council composed of men chosen on account of their capacity, have established an efficient government able to guide the disorderly elements of society through a time of transition, and thus saved their dynasty. As it was, Henry VI.'s failure to rule the country only aggravated the dangers which were gathering round his house, and threatening its very existence. He was unfortunate enough to live in a period which saw the end of a system of government unfitted for the age, and the absence of any new system in its place. The utter weakness of his character rendered him absolutely unfit to carry on the policy which had taxed all the powers of Henry IV. in less difficult days. Besides, in Henry IV.'s reign



modifications.
great lords
g increase in
oreign policy
werty of the
ties, all de-
the head of
f Henry VI.'s
policy of his
incapacity to
in reform, in



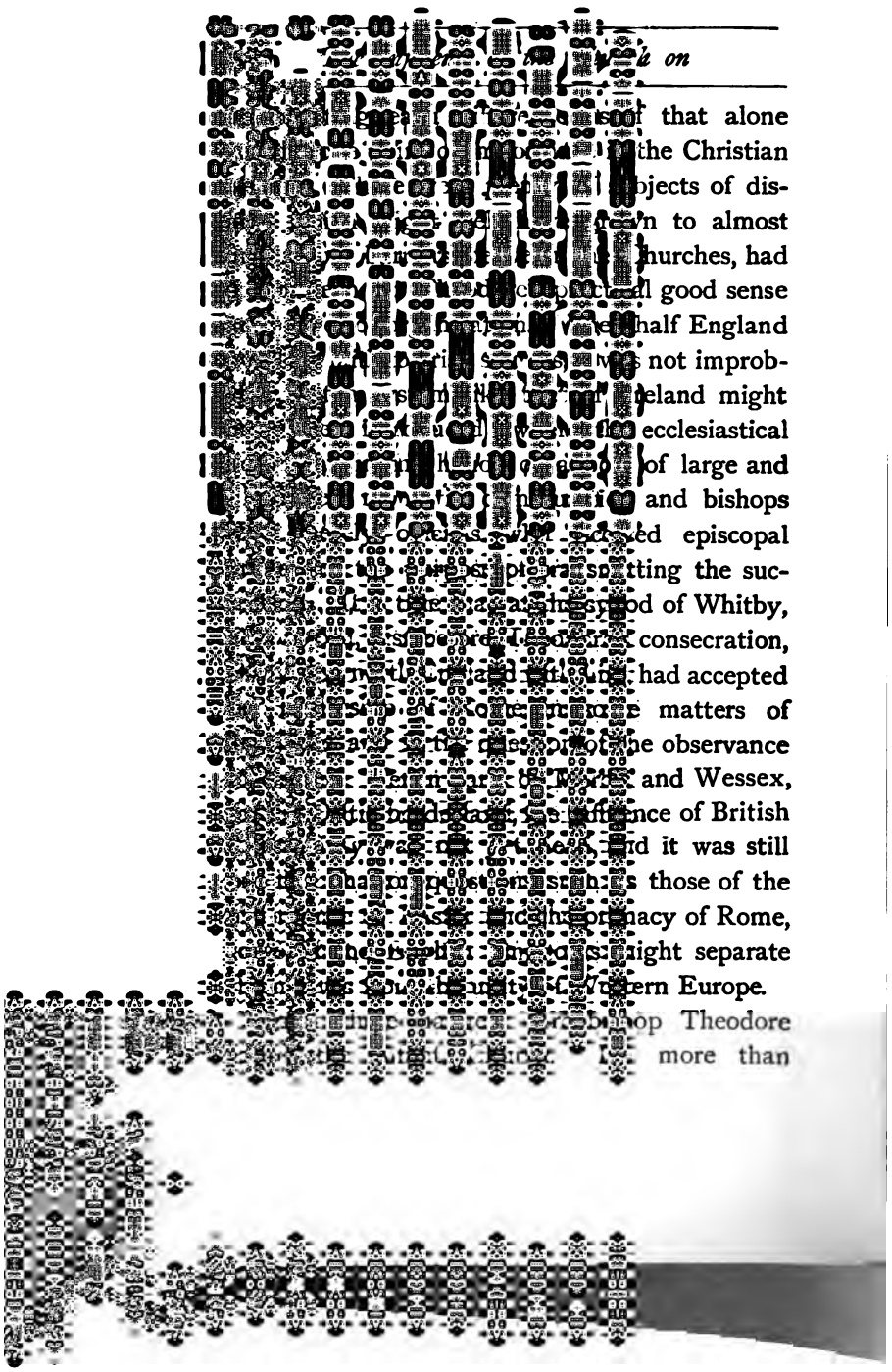
ESSAY VI.

THE INFLUENCE OF THE CHURCH ON THE DEVELOPMENT OF THE STATE.

Difficulties of early English Christianity.

IT was from Archbishop Theodore that the Church of England derived the organization necessary to fit her to enter into relations with the State, and exercise an influence upon the political growth of the nation. The Heptarchic kingdoms owed their Christianity to different sources: Kent to the Roman mission of S. Augustine, Northumbria and Mercia to the Scoto-Irish missions of Aidan and Chad, East Anglia to the labours of Felix a Burgundian, Wessex to those of Birinus, an Italian, and Sussex to the devotion of Wilfrid. The Church was thus herself in danger of losing the inestimable boon of unity which she was giving to the nation. Each separate kingdom might have had a Church of its own, differing in traditions from its neighbours, and proudly

[illegible] on



[illegible] that alone [illegible] the Christian [illegible] objects of dis- [illegible] n to almost [illegible] hurches, had [illegible] l good sense [illegible] half England [illegible] not improb- [illegible] eland might [illegible] ecclesiastical [illegible] of large and [illegible] and bishops [illegible] ed episcopal [illegible] tting the suc- [illegible] od of Whitby, [illegible] consecration, [illegible] had accepted [illegible] matters of [illegible] he observance [illegible] and Wessex, [illegible] nce of British [illegible] d it was still [illegible] those of the [illegible] acy of Rome, [illegible] ight separate [illegible] ern Europe.

[illegible] op Theodore [illegible] more than

doubled the number of bishops, making the boundaries of the new dioceses coincide as far as possible with the territorial limits of the tribes which had originally settled in the land, and placed the seat of the bishop almost invariably in a small village, where his independence would be more secure than in a town. He then instituted a synod of all the bishops, to be held under the presidency of the Archbishop of Canterbury every year, and so provided for combined action and personal direction. The system thus begun by Theodore soon spread further. Just as each bishop was allotted a defined area of no very considerable size, if the sparseness of population is considered, for the management of which he was responsible to the archbishop; so each township, or, when the population was small, a collection of townships, was formed into the parish for the spiritual necessities of which the parish priest was responsible to the bishop. So by degrees, quite apart from the missionary work of the monasteries, England became divided for spiritual purposes, into the definite areas of parishes and dioceses, for the ministrations of which definite ecclesiastical authorities were responsible. In later times, when England gained political unity in much the same way as she had at this time

(1) cop spo bili

(2) pare syste

[illegible] e took advan-
[illegible] now become
[illegible] stead of the
[illegible] e the recog-
[illegible] The origin
[illegible] to Theodore,
[illegible] m, which was
[illegible] and national
[illegible] sh instead of
[illegible] on. By the
[illegible] he gave to
[illegible] the political
[illegible] y attain, and
[illegible] apart from,
[illegible] the kingdoms
[illegible] This enabled
[illegible] ion with great
[illegible] e amount of
[illegible] nd even to do
[illegible] different states
[illegible] rounded them.
[illegible] f the English
[illegible] ry so different
[illegible] den Church of

[illegible] yes the leading
[illegible] glish Church,
[illegible] emerged from

the hands of Archbishop Theodore—who, far more than Augustine or even Aidan, has a right to be considered her real founder—and began to exercise a leading influence upon the development of the national life.

She was in full communion with the great Church of the West. She held the same faith, was organized on the same pattern, and was governed in the same manner, as had been distinctive of the Catholic Church since the apostolic age, namely by bishops and synods. But partly owing to insular position, partly to the influence of the Scoto-Irish missionaries, who had taken so large a share in the final conversion of the northern kingdoms, partly perhaps to the traditions of British Christianity which still lingered in the countries bordering on Wales and Strathclyde, she retained a measure of self-government and real independence which was unique among the Churches which acknowledged the patriarchal dignity of Rome.

The dioceses of England were sixteen in number,—and, indeed, did not amount to more than eighteen until the Reformation,—of which twelve formed the province of Canterbury and four the province of York; but as the latter province was of comparatively small importance

[illegible] quest, and was [illegible] l growth of the [illegible] more by the [illegible] terest of eccle- [illegible] he province and [illegible] erbury was close [illegible] absorbed in the [illegible] rchbishops very [illegible] influence upon [illegible]

[illegible] was transacted [illegible] their synods— [illegible]—or personally, [illegible] l authority. It [illegible] stical legislation [illegible] State either by [illegible] aldorman to the [illegible] passed—though [illegible] ctually took part [illegible] y the subsequent [illegible] here is no doubt [illegible] ower was given, [illegible] in carrying out [illegible] us became part [illegible] well as of the [illegible] like other law [illegible] re-moots. It is [illegible] recognized and

enforced sentences of the bishop, given in his own private court, in matters which affected the morals and discipline of the clergy. However this may be, the bishops certainly enjoyed a limited jurisdiction of a temporal character by common law, besides the considerable spiritual authority which they exercised over both clergy and laity, apart from the common law, in virtue of disciplinary canons and the codes of morals called penitentiaries, the rules of which were generally recognized as binding upon the conscience. Relations between Church and State, so close and so liable to become confused, are highly characteristic of the rough-and-ready illogical way in which the early English constitution developed. They were only possible in a society in which the conception of law was in its infancy, where legislators and jurists did not distinguish over nicely between law and morality, and were content to make both coincide with religion. They could not stand for a moment under the keen criticism of Norman logic, nor, indeed, could they have long withstood the disintegrating effect of the spread of knowledge. Directly men began to see that it was possible that it might not be the duty of the State to punish all actions which were contrary to the law of God, a distinction

(4) *Relations between Church and State.*

religion which
two systems,
human action,
points of view
one for the
for the welfare
he whole of the
quest that dis-
asserting itself,
ggish tempera-
the political
ystem we have
. A series of
y distinct func-
ritual, are con-
same persons,
the same sur-
conditions, are
a peculiarly or-
itual element is
takes the lead;
are docile, and
to the principle
ly well.
and the State
ot unfairly be
of the State by
and Lanfranc

altered this by recognizing the authority of each in its own sphere, they were only carrying quickly into effect what must inevitably have come about slowly in the course of a few years. By substituting an alliance between the two powers for what had been almost an absorption of one by the other, they were taking a necessary step onwards in the progress of the national life; though by so doing they raised for the first time in English history the problem of the due adjustment of the relations between the two, which has always hitherto proved, and must always prove, insoluble.

(5) *Maintenance of the clergy.*

At first the maintenance of the clergy was provided for by free offerings of the people, of which tithe was the most important item. At the Legatine Council of 787 that which had been a religious obligation on the faithful was made legally binding upon the whole as a Christian people, and the payment of tithe to the bishop became just as much an obligation of law as the payment of taxes to the king. Considerable freedom was, however, still permitted as to the church or parish to which each individual landowner should make the necessary payment. Although in theory the whole tithe of a diocese ought to be paid to the bishop, and by him divided among the several parishes at his dis-

up of devoting
part of it, to a
accorded to the
year 1200 that
to the mainte-
made universal,
ble portion of
e annexed to
ingly forfeited
of the monas-
VIII., and by him
greatest glory,
buses of early
earlier days of
the monastery was the station
the bishop, and
then the Church
endeavouring to
the monastery
candidates for the
the necessary
English Chris-
with monasti-
for Englishmen
into monasteries
limited time, with-
es or the plea-

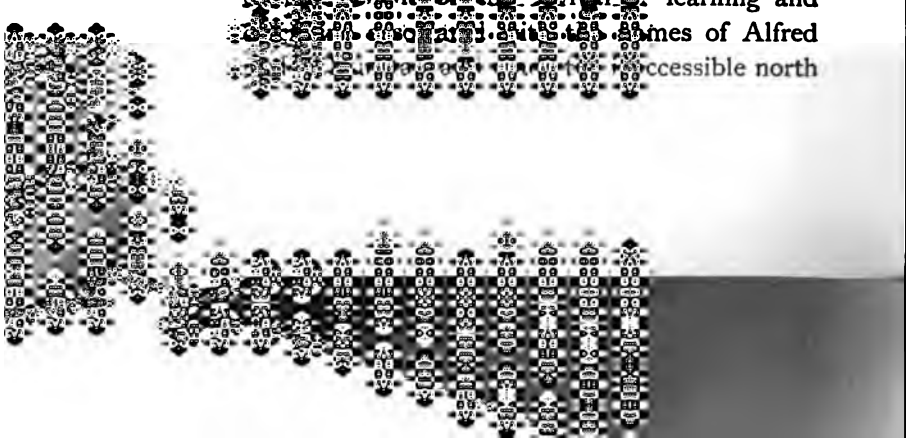
sures of the world. Retirement, in an age of roughness and of loneliness, to houses which were larger, more comfortable, and better built than most of the houses of the time, where society was easily obtainable, and the restraints of religious rule certainly light, perhaps hardly perceptible, made no very great demands upon the self-denial of the inmates.

But there were other evils besides this laxity of administration from which the monasteries suffered. Among them abuse of patronage was by no means the least. Kings and great men soon began to look upon the monasteries, of which they were the benefactors, in the light of their private property; and there is evidence to show that even an hereditary succession of monastic estates in particular families was comparatively common.

Effect of the Danish invasions.

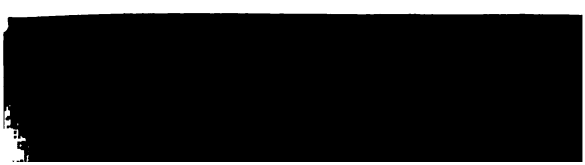
By the ninth century this spirit of laxity which was thus visible in the monasteries had extended to the whole Church. During the long period of political confusion, which lasted until the time of Egbert, while one kingdom after another was enjoying a brief period of pre-eminence, from which it was sure to fall back into a condition of chaos worse than before, the Church became the only constant factor in the State polity. To the bishops, accordingly, fell

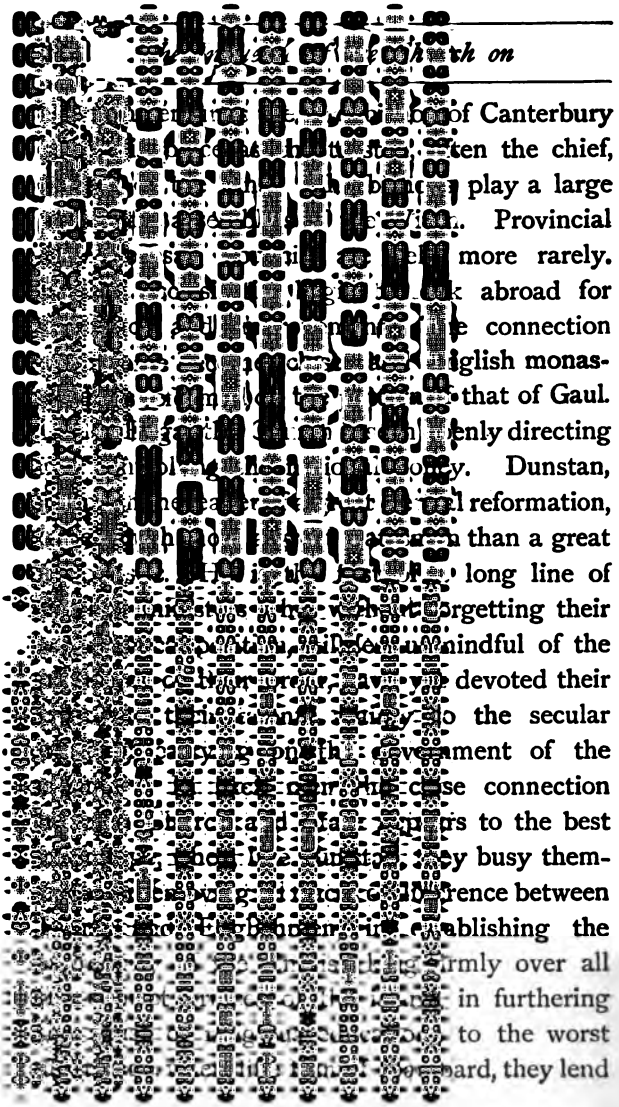
litical power,
at the Church
maker. This
the spiritual
the standard
ng the secular
amongst the
standard of
s are found
nto the battle-
d in 871, the
at there were
o could under-
books in the
from neglect.
d the Danish
Northumbria,
rning, became
t of England.
imate became
nction of the
n. This isola-
id just at the
power finally
d his province
learning and
mes of Alfred



permanently lag behind the now unit
the path of civilization. It is not ti
Norman conquest that the northe
attempts to assert anything like a
with his brother of Canterbury. It
the end of the eighteenth century
north of England plays a leading par
ing the affairs of the country.

In the century following the conv
Church had taught England to be on
thereby assumed a position of ind
almost unique among national Chu
the revival which immediately foll
attacks of the Danes, the initiative, o
trary, came from the king, and not
Church. It was the royal, not the ecc
power which won back for England
and which taught her to lead captive h
conqueror. It was the royal powe
ecclesiastical, which restored to the C
dominion over the conquered district
land, and which infused into her a new
knowledge and stirred a love of learni
natural consequence of this was that th
power became more closely united to,
dependent on, the royal power than
With the growth of dependence came
sponding loss of initiative. During the





themselves to be the ministers and sycophants of an unprincipled despot. In the last few years of early English kingship, when the foreign and the national party under Edward the Confessor were rehearsing the struggle afterwards fought out on the hill of Senlac and amid the fens of Ely, it is round Church questions that the rivalries centre. The foreign appointments of the Confessor, the intrusion of Stigand into the vacated seat of Robert of Jumièges, the relations of Harold to the antipope Benedict, are the questions which give strength and weakness to one side or the other, which decide men's actions, and do much to determine the issue of the final appeal to arms. It is significant how much the party of Godwine owed to a body whose support they had never taken particular care to secure. When we find that successive kings as different as Edward and Harold become the benefactors of the Church by the monastic foundation of S. Peter's of Westminster and the secular foundation of Holy Cross at Waltham, and that great ealdormen like Leofric of Mercia, are noted for liberality in the foundation of monasteries, it is clear that the Church was powerful enough for the great men of the day to wish to gain her favour. It is more difficult to say how far this partial loss of independence and increase of

[illegible] the national [illegible] Danish and of [illegible] distinguishing [illegible] the eleventh [illegible] assume that [illegible] statesmen and [illegible] in retaining [illegible] under Canute, [illegible] the danger to [illegible] institutions [illegible] civil, which [illegible] the Normans; [illegible] unwillingly, [illegible] connection [illegible] interests [illegible] England [illegible] those which [illegible] growth.

[illegible] quest are seen [illegible] the Church. [illegible] more imme- [illegible] able in civil [illegible] of both is [illegible] William I. was a [illegible] his own mind, [illegible] ved implicitly [illegible] therefore, with [illegible] all respects

to that which he adopted towards the State; and it mattered not whether he was dealing with a powerful and successful pope, or a weak and discredited archbishop. In all cases he would be fair, as he counted fairness, give to each his acknowledged due, be strictly just but never generous, and take care that under no circumstances, as far as he could foresee, should any rival be allowed to the power of the king within his realm of England. Norman barons had disputed his succession to his duchy. Norman landowners, strong in the undivided allegiance of their vassals, had joined his rival of France in his earlier wars. Norman archbishops and bishops, sprung from feudal families, enjoying what were almost hereditary honours, had attempted to use the authority of the Church to favour the plans of his enemies. They had even been inclined to question the binding force of the papal blessing upon his English expedition.

He would take care that no such dangers should threaten his English throne. English barons were to be carefully prevented from obtaining large united territorial possessions. English landowners, one and all, were to be dependent on the king and responsible to him alone. English archbishops and bishops were

[illegible] on

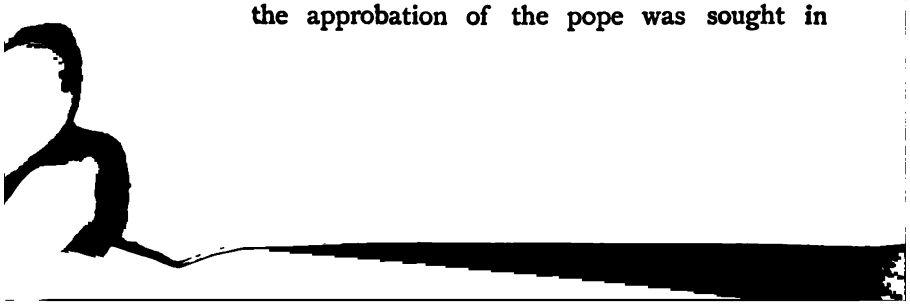
[illegible] t they were [illegible] h the quali- [illegible]. All traces [illegible] and English [illegible] swept away. [illegible] est between [illegible] not improb- [illegible] the Crown, [illegible] d suspicion. [illegible] ticipation in [illegible] of justice, [illegible] the land, by [illegible] dicature and [illegible] matters not [illegible] the authority [illegible] y the canon [illegible] became re- [illegible] pope and not [illegible] papal court [illegible] ssity of first [illegible] before the [illegible] be lodged.

[illegible] iam had the [illegible] e one who [illegible] e zeal of an [illegible] statesman. [illegible] fitted to be [illegible] ing in eccle-

siastical affairs. His unerring tact
unlike Dunstan, to avoid making
of a friend to grow into the d
minister. He had a further adv
Dunstan in that he was born in
had received the training of a la
before William had even planned h
to England, Lanfranc was well knc
out the West as one of the greatest
scholars. Italian by birth and Nor
he knew the strength and the wea
papal system, now growing to ma
Hildebrand. He had himself beer
once the special advocate of Rom
now the trusted minister of a king
himself on admitting no superior
his own in his realm of England.
centralization of Rome, its busine
its moral power, its legal system
made to work harmoniously with a
which, depending on no principle a
ing no theory, had yet hitherto gi
people of England a large amount
independence and political self-g
and was in the future, with all t
introduced by the conquest, to save
the anarchy of unchecked feudalis
misery of unchecked tyranny: if th

between Church and State could be so regulated that the moral power of the Church might prevail to prevent the despotism of the king from degenerating into tyranny; and the jealousy of the king invoked to prevent the independence of the Church from degenerating into unpatriotic privilege, how great might be the future of England! It was a policy well worthy of two such men as William and Lanfranc, but to carry it out successfully it was necessary that many Williams and many Lanfrancs should successively direct the fortunes of England, in order that a time of steady and orderly government might appease the heart-burnings consequent on the Conquest, and make Englishmen not merely contented with, but attached to, the new state of things. Such a time of much-needed rest was not secured. Under Lanfranc's guidance, William remodelled the old English system. All traces of uncanonical irregularity were first swept away. Stigand was deposed, and bishops consecrated by him obliged to receive reconsecration. Normans were appointed to all the most important ecclesiastical offices. The relations with the papacy, which had for some time been far from cordial, were now drawn much closer. Peter's-pence was regularly paid, the approbation of the pope was sought in

Measures of Lanfranc.



most matters of importance, his authority in legal and moral questions was more invoked. William, indeed, refused in decided terms the claim for homage made by Hildebrand, and laid down in the clearest possible way, in what he called the customs of the English Church, the absolute right of the king to decide for his subjects to whom their spiritual allegiance should be given, to control the enforcement of Church legislation, and to check the admission of papal messages; yet, inasmuch as the opportunities given to the pope to exercise authority were naturally much increased by the incorporation of England into the society of western nations, it was only to be expected that those opportunities should be fully and freely used.

Results of the policy of William and Lanfranc.

We find, therefore, the Church, as influenced by the Norman conquest and moulded by the genius of William and Lanfranc, assuming a position much more defined, and representing interests much more distinctively her own than before. She is now a society within the State, with other objects than those of the State, organized purposely as a power apart from the State. She absorbs most of the intellect, and consequently embodies most of the political thought, of the nation. She is ruled by a hierarchy thoroughly imbued with the high ideas of

[illegible] the continent. [illegible] pacy, which is [illegible] deas. Yet she [illegible] her priesthood [illegible] ue traditional [illegible] edom. Taking [illegible] nizance of all [illegible] she no longer [illegible] Church disci- [illegible] its growth by [illegible] of the canon [illegible] character and [illegible]

[illegible] organized as [illegible] tions. Above [illegible] ay undisputed [illegible] the Church by [illegible] nevertheless [illegible] ement. In the [illegible] e two systems [illegible] n of national [illegible] esiastical order [illegible] ity in govern- [illegible] He is therefore [illegible] he side of, but [illegible] siastical autho- [illegible] I. or Henry I., [illegible] dal anarchy,

against it when, like William II. or Henry II., he finds ecclesiastical authority interfere with the free exercise of his own methods of government. Hitherto Church and State together, have, under the leadership of the Church, taught England to gain her unity, given to England her national feeling, and formed for her in no slight measure her polity. In the future we have to trace how, as separate powers, sometimes in alliance, sometimes in enmity, always in competition, each assists in the growth of the other, and helps to evolve out of the chaos of conflicting interests, something of the orderly principles and practical good sense characteristic of the English constitution.

Alliance of the Church and the Crown with the people.

During the period that elapsed between the Conquest and the death of Henry II., the dangers which threatened the prosperity and the liberty of Englishmen came from the feudal baronage. The alliance between the Crown and the people is close throughout, and the people gladly support the supremacy, and even acquiesce in the tyranny, of the Crown, because they recognize that in the Crown is found the only efficient safeguard against the far worse tyranny of the nobles. The influence of the Church was thrown on the same side. It was to Lanfranc and the English that William Rufus owed his

Anselm as the people. When pion of papal are found on It was when ishops that he of the country. a few years papal preroga- y national and olution of the dal risings, the ent, are due in lliance between people, under the flowed from it The Norman d, anxious to own interests as or to forego any law might give men who, free ss sympathies service of their was found in the of Salisbury and al ingenuity had f the law of the

Church, who had learned business habits in administering the affairs of a great household. From being merely the servants, they grew into the advisers of the king. From being ministers, they became statesmen. The administrative reforms of Henry I. and Henry II. were largely carried out by men of this stamp. As a reward for their services they received ecclesiastical preferment. They brought the knowledge of legal principle and procedure which they had gained from the civil and canon law, to assist the development of royal authority, and the establishment of a system of procedure, sufficiently intricate to require the assistance of a professional class for its administration. Thus the feudal nobles became gradually ousted, not merely from the business of the country, but even from their own jurisdictions, but the Church herself, though spiritually the weaker, became politically the stronger, from having among her principal officers the men in whose hands the duty of administering the affairs of the country mainly lay.

Their influence upon the constitution.

The Crown and the Church were thus increasing in power side by side—the Crown by being the centre of the opposition to the feudal baronage, the Church by her connection with a wider world abroad, by her official relations

Quarrel between the Church and the Crown.

with the Crown at home, and by her hold on the affection of the people as representing a power higher than that of mere force. A contest was inevitable between the two, directly either attempted to assert complete freedom from the control of the other. It is here that the constitutional importance of the struggle between Church and State in the twelfth century really lies. If Ranulf Flambard and William Rufus had succeeded in making ecclesiastical offices in all points subject to the ordinary law which regulated lay fiefs, if bishoprics had been degraded into mere pieces of patronage belonging to the king—property which he might deal with as he liked, if Henry II. had succeeded in imposing the royal supremacy completely upon the Church, the liberties of Englishmen would have suffered no less than the privileges of the Church. To look at the struggles between Henry I. and Anselm, and between Henry II. and Becket, simply as struggles between royal supremacy and clerical privilege, is merely to look at one side of the question.

Its constitutional importance.

The Church had joined with the Crown and the people to suppress the power of the feudal nobles. The Crown, thus rendered supreme over the feudal state, armed itself with the weapons of feudalism to enforce a similar

supremacy over the Church. At the same time, the Church, stirred by the success of the papacy, conscious that it represented a higher moral ideal in government, was trying to use the weapon of the canon law to render itself independent of the control of the Crown. The complete victory of either would have been fatal to the well-being of the nation, for the Church represented the only idea of moral government attainable in that age of force, and without the idea of moral government, constitutional liberty is impossible; while the Crown represented the only idea of national unity attainable in an age of feudalism, and without national unity constitutional liberty could not be won. It was just because neither was completely victorious, but because each was victorious in its own sphere, that the ultimate achievement of liberty was assured. In the question of investitures the symbols of spiritual power remained with the Church, and those of the temporal power with the king. By the Constitutions of Clarendon Henry obtained a recognition of the doctrine that in his realm of England the king is over all persons, ecclesiastical as well as civil, supreme. By the abrogation of the constitutions on Henry's penance, the Church received a guarantee that this royal supremacy would be

exercised with due regard to her superior moral claims. Each of the rival powers was thus victorious in its own sphere, and by its victory was able first to forward the complete unity of the nation under the king, and then to limit the king's authority when it threatened to degenerate into tyranny, by the checks of the independent rights of the Church and of the people, as we find them laid down in Magna Carta.

Altered relations between Church and State in consequence.

Looking at the relations between Church and State at the time when, by the penance of Henry II., the struggle may be said to have ended, we are conscious of a great change in the position of both parties. The Crown is now completely free from feudal rivalry. It has successfully established in central and local government a system of administration, both fiscal and judicial, of which it is itself the head, and to which it supplies the motive power. It has further surrounded itself with a body of officials, owing their position wholly to the royal pleasure, and entirely dependent upon the royal favour, to whom is committed the duty of administering a strongly centralized system of royal government. The bureaucracy of modern despotic and republican governments is strangely anticipated by the house of Anjou.

The only check to an administrative tyranny,

in which judges, legislators, and ministers are all dependent on the king and the king alone, is found in a Church as highly organized, with an administrative system of judges, legislators, and ministers of her own, almost independent of the king. The Church claimed to represent a higher morality than that of the State, and to give effect to it by the system of appeals to the pope, now well established. She was enabled, by the knowledge of the civil law but lately revived, and the canon law lately codified by Gratian and Ivo of Chartres, to oppose a legal system to that of the Crown as perfect and more scientific. She trained for the service of the king most of the ministers to whom the task of administering the affairs of the kingdom were entrusted. When she added to her independent organization and intellectual superiority a unity of purpose which was strengthened by the enforcement of celibacy, and a zeal which was stirred by the development of monasticism, she became a rival too strong for the Crown to overcome—a power capable of awakening the slumbering energies of a nation which had not had time wholly to forget the traditions of its old freedom.

Alliance of the Church with the

The exactions of Richard I. and the tyranny of John broke the alliance between the Crown

barons and the people against the Crown.

and the Church, which, though it had been sorely strained by the struggle of the twelfth century, had yet existed since the days of William I. From the death of Hubert Walter in 1205, the influence of the Church is thrown on the side of the barons and the people, in opposition to the Crown. It is the Church which, under the leadership of Stephen Langton, obtains Magna Carta from John, on the basis of the charter of Henry I. It is the Church which, on the death of John, takes the lead in settling the government in the hands of the regent Pembroke, on the basis of Magna Carta. But although the influence of the Church was on the popular side, and did much to gain and establish popular liberty, ecclesiastical feeling was not by any means unanimous. The unconditional surrender of John to the pope threw all the influence of the papacy on the side of the tyrant, and caused the rise of a party in England which, being primarily devoted to the interests of the pope, found itself usually supporting the authority of the king. Thus was formed an alliance between despotism in Church and State which proved terribly detrimental to both. The papacy, in constant opposition to the best feeling of the Church and the free instincts of the nation

Formation of two parties in the Church; (α) the papal; (β) the national.

forfeited her claim to represent a higher morality. The king, too often seen to be the servant and the tax-gatherer of the pope, forfeited all right to be considered in any way as the representative of the nation. We thus find in the Church of the thirteenth century two distinct parties. The one comprised the royal nominees, the foreign ecclesiastics and the regular clergy, both monks and friars, who, strongly attached to the papacy, and supporting the claims made by the popes to govern England as a papal fief in virtue of the submission of John, lent their assistance to a discredited crown, willing to purchase it by unworthy deference to a foreign power. The other consisted of the leaders of the constitutional baronage, the bulk of the secular clergy and of the commonalty of the land, who, actuated by strong, almost unreasoning, dislike of foreigners, and in constant opposition to the king, were anxious to resist papal encroachments, not because they denied papal prerogative on principle, but because they desired to limit it as well as that of the king by the checks of legal precedent and national right. Pope and king were therefore united by adherence to a common principle and opposition to a common enemy. Church and people found,

The latter the true Church party, the supporters of Earl Simon and of the constitutional baronial party.

themselves threatened by a common tyranny. Men like Grosseteste and Edmund Rich, second to none in their loyalty to the papacy as an institution, were compelled to head the protest against the abuse of papal power. In the rising of the barons under Simon de Montfort, and in the Provisions of Oxford, the political charter of the rising, the Church made common cause with the people, and sanctioned a resort to force on behalf of liberty, as the only ultimate appeal in a constitution still imperfect.

In the great constitutional struggle against Edward I., which resulted in the confirmation of the charters, and the acknowledgment by the king of the principle that taxation without consent of Parliament was illegal, the Church under Archbishop Winchilsey, played no small part. It was the opposition of the clergy to the taxation levied by Edward that stirred the opposition of the baronage. It was the combined action of the two estates that forced the king to yield. The motives of the spiritualty were, it is true, by no means wholly patriotic. By the bull *clericis laicos*, Boniface VIII. had asserted the principles of clerical pretension and caste exclusiveness in their worst forms, by denying the right of the temporal power to tax the clergy at all; and the bishops in supporting him pressed

their spiritual allegiance to the pope further than their duty to their country could possibly warrant. Nevertheless, directly opposition to the royal demands was begun, the clergy found sympathizers with their actions, if not with their motives, from among the baronage, and the question was at once raised to a higher platform, and fought out and decided on the higher ground of constitutional principle, instead of the lower one of clerical privilege. By the institution of Parliament Edward I. gave the answer to the great question how it was possible to combine national institutions with monarchical government, and the Church received the reward of her patriotism by the full recognition of the spirituality as an estate of the realm. The power which had taken the lead in the gaining of liberty under John, had done so much to consolidate liberty under Henry III., was under Edward I. to form an integral and important part of the institution of Parliament, by which liberty was to be finally guaranteed and developed.

Recognition of the spirituality as an estate of the realm.

By the organization of Parliament the structure of the English constitution was complete. The principle of representation thus applied to matters of government, when combined with the hereditary principle by that time become domi-

Influence of the Church upon the framework of the constitution.

nant over the Crown and the nobility, brought about the balance of constitutional forces known as a limited monarchy. From the time of Edward I. the question of what kind of government England was to have was settled. It was to be a limited monarchy—government by king and Parliament. In the decision of that question the Church had played an important part, both politically and constitutionally—politically by severing her old alliance with the Crown, and giving herself over more or less unreservedly to the cause of liberty as maintained by the barons and people in their struggles with John and Henry III.—constitutionally by the influence she exerted on the actual result of the framework of the constitution, on the legislature, and on the executive. We will now go on to consider this latter point more in detail.

(1) *Representation.*

Representation.—The principle of representation is the key-note of the English constitution. It is by the application of that principle to the different parts of government that the will of the nation is brought to bear upon the action of its rulers, and that some guarantee is obtained that the policy of the country will be directed in accordance with the interests of the whole body of electors, and not in favour of one particular class. Foreign writers have often remarked

upon the ease with which this great constitutional principle established its supremacy among English institutions. Although it would be too much to attribute this entirely to the influence of the Church, there is no doubt that her example did much to pave the way. Representation was a mode of obtaining the opinion of large numbers of people quite familiar to ecclesiastical statesmen like Roger of Salisbury, Becket, and Hubert Walter, to whom is mainly due its development as the leading principle of civil administration. Ecclesiastical councils, diocesan, provincial, or national, had been based on this principle from the earliest times. The close connection between Church and State which had existed before the Conquest had accustomed men's minds to a system which was reasonable in itself and convenient in practice. The number of important councils summoned by the popes during the twelfth and thirteenth centuries had shown how valuable might be the support given by a body of representatives, coming from different parts of Christendom, to a cause which claimed to depend upon moral right rather than upon force. The plan, familiar to an ecclesiastical body, of electing proctors to represent their case when disputes arose, before the courts of pope or the king, possibly suggested

the similar machinery of the election of sworn knights to nominate the recognitors of the Great Assize. Naturally, therefore, when in the thirteenth century it was found necessary to enlist in some definite way the support of the whole nation in the effort to secure for all classes the benefits won for them by Magna Carta, recourse was had to a principle of government which, through the example of the Church, was well known to the people; and which had brought to the Western Church in its contest with the emperor just the very kind of strength which the nation was now seeking in its struggles with the Crown.

(2) *Legal procedure.*

The Legal system.—In the forms of the legal system, as gradually developed in the twelfth and thirteenth centuries, the influence of ecclesiastical procedure is more marked. The reason is not far to seek. The ecclesiastical system of law preceded the national system in time and excelled it in precision. Disciplinary canons, formally passed with all the authority of a large representative assembly, and claiming by that authority permanently to bind the action of Western Christendom, were well known and commonly obeyed, while Norman legislation was still in the tentative form of assizes and provisions. The canon law had been codified and

systematized by Ivo of Chartres and Gratian before the statute-book began to be. It is not until the law takes the fully defined form of statute under Edward I. that the analogy to the ecclesiastical canon is complete. There is reason to think that the practice of the royal courts was copied direct from the courts ecclesiastical. The Church holy days, appointed to be observed by the canon law by the cessation of all litigation, were equally observed in the royal courts. The forms of pleading by which suits were begun were substantially the same; the same rules of practice obtained, and even apparently the same law of evidence.[1] Records of proceedings were ordered to be kept, in imitation of the documents found so useful in ecclesiastical litigation. At the same time, it must be remembered that directly the common law became elaborated into a system, the jealousy shown by the common lawyers of both the canon and the civil law was most obstinate. After the time of Henry III. the influence of the ecclesiastical law and procedure ceased to be the direct influence of an example, and became merely educational,

[1] This is the view of Mr. J. G. Phillimore (see "Oxford and Cambridge Essays:" Essay on the Influence of the Canon Law), but the procedure of both the canon and common law may have been taken from the civil law.

i.e. that of a rival system of jurisprudence, the study of which was interesting and necessary to the properly trained jurist, but was without direct bearing on the practice of the courts.

(3) *Vindication of individual right.*

Vindication of individual right.—We have seen that the Church, owing to her position of independence, was the only power that was able to withstand the authority of a king, guarded and supported by a bureaucracy of his own nomination; and we have seen how the Church used that power in order to defend her own privileges against Henry II., and national liberty against the tyranny of John. But it was not only by the occasional assertion of general principles that the Church helped to nourish and develope the growing plant of liberty. In all questions which affected the personal rights of the individual, she is found witnessing to a higher civilization and truer standard of duty. From the first the Church had always set her face against the institution of slavery, and had succeeded in mitigating, and eventually, in the twelfth century, in putting an end to it, chiefly through the efforts of men like Wulfstan, Remigius, and Anselm. Since then personal slavery has been unknown in England. The practice of ordeal, both in the coarse old English forms or in the more chivalrous Norman form

of wager of battle, was equally obnoxious to the spirit of Christianity, and the reform of criminal procedure carried out by Henry II. received the support of the Church all the more readily, because it was seen that thereby the use of the ordeal would be greatly lessened. A few years later no difficulty was experienced in carrying out the abolition of the ordeal altogether in obedience to the decisions of the Lateran Council of 1215.

In matters of unjust taxation the Church is found still more decidedly in the forefront of the battle. To Becket we owe the first refusal of a subject to pay a tax to the Crown which he believed to be unjust; when he refused in 1163, to admit the king's right to levy Danegeld[1] on Church lands as a part of the ordinary revenue of the Crown—a refusal as bold, if not so patriotic, as that of John Hampden centuries later. To Hugh of Lincoln is due the credit of being the first who maintained successfully the doctrine that lands in England were not taxable by the king for the maintenance of a foreign war, with which England had no concern. Geoffrey, Archbishop of York, went into exile in 1207 rather than consent to the levying of a tax upon the clergy of a thirteenth on moveables,

[1] There seems, however, to be some reason to doubt if this tax was Danegeld. See *English Historical Review*, October, 1890.

which they had not in any way consented to give. Robert Grosseteste, Bishop of Lincoln, the friend and adviser of Simon de Montfort, led the opposition to the attempt of the king to take a tenth of the revenues of the clergy in 1252, on the pretext of a crusade, and protested, with a freedom unusual in that age, against the unholy alliance of king and pope to plunder the English nation and Church. To Winchilsey, quite as much as to Bohun and Bigod, is due the obtaining of the confirmation of the charters by Edward I., by which taxation was put under the control of Parliament. These are but a few instances of the kind of warfare carried on by the Church on behalf of public and private liberty, both against the king and against the pope, during the period we are dealing with. That the constitution of England was eventually under Edward I., formed on the basis of a monarchy limited by law and guided by Parliament, by which was secured to each individual the enjoyment of public and private rights guaranteed by the law and defended by Parliament, was due in no slight measure to the constant influence of Church opinion on the side of liberty, to the educating effect of Church principles, to the example of Church polity, and to the self-denying patriotic labours of

men like Stephen Langton, Edmund Rich, and Winchilsey, the leading minds among the clergy.

Character of the constitution under Edward I.

Under Edward I. the mediæval English state system attained complete development. By the organization of the country in three estates of the realm,—the spiritualty, the baronage, and the commonalty,—under a king whose authority over all, though supreme in principle, was limited in fact by the united action of the three estates assembled by representation in Parliament, the nation acquired a means of bringing influence to bear upon the government which could not fail, in times of royal necessity, to amount to little less than a control of the royal policy. It is the great merit of Edward I. that he sought to make his government rest upon the national will, and looked upon the union between the Crown and the people as the surest source of strength. In pursuance of this policy he summoned the famous Model Parliament of 1295, in which all three estates of the realm were adequately represented. Although the completeness of the design was somewhat impaired by the persistent refusal of the clerical proctors to attend the meetings of Parliament throughout the fourteenth century except upon compulsion; yet as the bishops and abbots, who sat as barons in the Upper House, formed a majority of that

house, the interests of the Church were not likely to be overlooked, nor could the Parliament, even without the presence of the clerical proctors, be considered in any way insufficiently representative of the spiritual estate. The character of the constitutional warfare is, therefore, somewhat altered. In Parliament an institution has been found tolerably representative of the interests of the whole nation, an organization capable of asserting those interests against the Crown or the Church, a power which, when once it has obtained control of taxation, must by the law of necessity go on to obtain control of policy. The history of the constitution of England during the fourteenth and fifteenth centuries is the history of the gradual acquisition of political power by Parliament at the expense of the king, and by the commons at the expense of the king and of the nobility, and the constitutional importance of the Church will be found in the influence she brought to bear upon the combatants on either side. No longer, as in former times, does she educate political opinion; no longer does she stand forth as the champion of popular right, or the representative of popular instincts. Her place in these matters is taken by Parliament. The more that her organization is perfected, the more that definite theories of

Altered character of the influence of the Church in consequence.

the nature and limits of her authority are enunciated, the more does she tend to become an *imperium in imperio*, intent upon the maintenance of her own class interests, less and less sensitive to the pulse of the national feeling. Just as the national will is being brought to bear more directly upon government, and is affecting constitutional growth, the Church is beginning to lose her hold upon the nation. The influence she exercises upon the development of the constitution arises no longer from the fact that she represents the best thought of the nation, but from the fact that she is in herself a great institution, rich, educated, and strong, the policy of which cannot fail to affect powerfully the fortunes of any country in which she is planted.

It will be convenient to treat of the influence of the Church on the State during this period by considering her relations, first to the pope; secondly to the king; and thirdly to the people.

Relations of the Church to the pope.—The hierarchical theory of the Church, which insisted on the superiority of the spiritual over the temporal power, and exalted the claims of the papacy as the visible embodiment of the spiritual power over all ties personal and national, received in the thirteenth century in England, an acknowledgment more than ordi-

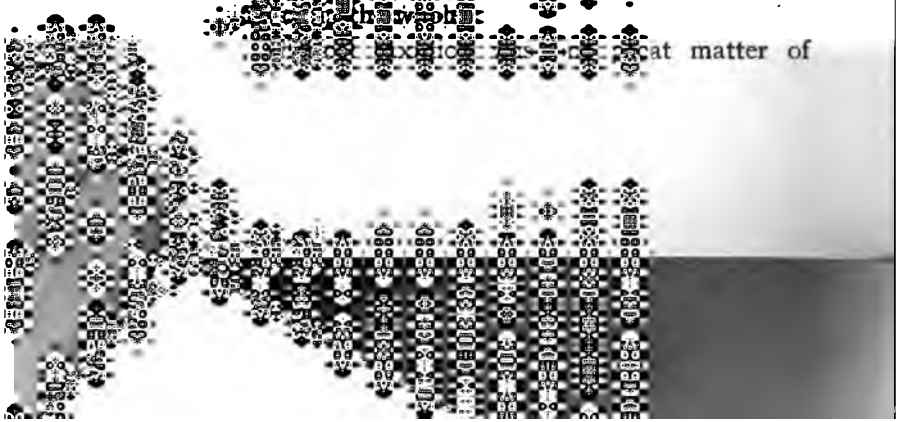
Relation with the pope.

(1) *Hierarchical theory of the Church.*

[illegible] fact that Eng-
[illegible] of John, a fief
[illegible] pared to admit
[illegible] ar of Christ in
[illegible] y many he was
[illegible] They were not
[illegible] to distinguish
[illegible] his spiritual or
[illegible] ned that, while
[illegible] cause England
[illegible] ong time more
[illegible] of the moral
[illegible] the other hand
[illegible] intolerable as
[illegible] in the nation,
[illegible] most as much
[illegible] f the pope as
[illegible] ral government.
[illegible] s, were seeking
[illegible] on found them-
[illegible] limit to papal
[illegible] rainty, to check
[illegible] dicate national
[illegible] m had become
[illegible] s impossible to
[illegible] of it without
[illegible]
[illegible] reat matter of

[illegible] *h on*

[illegible] ct that Eng-
[illegible] f John, a fief
[illegible] ared to admit
[illegible] r of Christ in
[illegible] many he was
[illegible] They were not
[illegible] distinguish
[illegible] is spiritual or
[illegible] ed that, while
[illegible] use England
[illegible] g time more
[illegible] f the moral
[illegible] e other hand
[illegible] ntolerable as
[illegible] n the nation,
[illegible] ost as much
[illegible] the pope as
[illegible] l government.
[illegible] were seeking
[illegible] n found them-
[illegible] imit to papal
[illegible] inty, to check
[illegible] cate national
[illegible] had become
[illegible] impossible to
[illegible] of it without
[illegible]



[illegible] at matter of

dispute. After the thirteenth century, hardly any attempt was made by the popes to tax the whole nation, and by the final repudiation of the papal suzerainty in 1366 all ground for such claims was taken away; but the exactions on the clergy continued with more or less severity throughout the mediæval period, although their pressure sensibly abated after the popes had removed to Avignon. First-fruits of bishoprics and other offices seem to have been paid with some degree of regularity from the beginning of the fourteenth century. Papal demands for subsidies were refused even by Richard II. and Henry VI., but the tax of a tenth of ecclesiastical revenue was frequently imposed, and, though in name it was granted voluntarily by the provincial synod, it was in reality a compulsory tax levied by the pope and enforced by the king. Impositions of this sort, regularly levied from time to time, could naturally only be collected with the consent of the king, and gave him convenient opportunity to exert pressure on the pope, when he found it desirable. Besides these regular sources of revenue, the pope obtained large sums from the English clergy, in the shape of fees for appointments and dispensations and bulls of various sorts, which, being less under

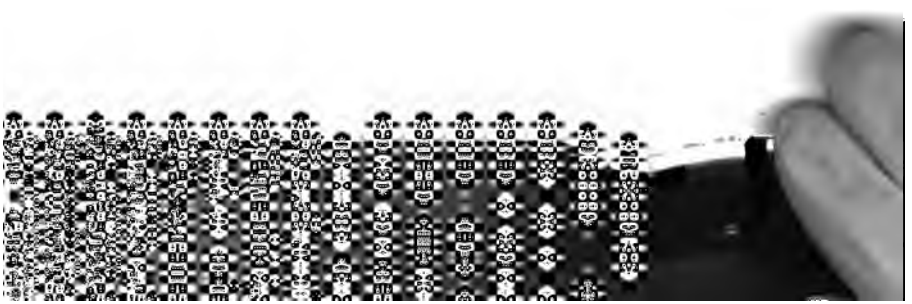
(2) *Taxation of the clergy by the pope.*

rmed a ready
nage, however,
taxation, and
of the nation
s and abbots
of Lords, the
ment lay was
tional import.
find that the
decisive voice
er the election
ct to be able
leed, did it so
ides being in
the bishops,
attendance in
uestion of the
somewhat com-
ast the nomina-
ng and Witan,
es of election
The Norman
in their Great
f the struggle
usual practice
the candidate,
to the cathedral
province con-

(β) *Provisions.*

rmed a ready
nage, however,
taxation, and
of the nation
s and abbots
of Lords, the
ment lay was
tional import.
find that the
decisive voice
er the election
ct to be able
eed, did it so
sides being in
n the bishops,
attendance in
estion of the
mewhat com-
st the nomina-
ng and Witan,
es of election
The Norman
in their Great
f the struggle
usual practice
the candidate,
to the cathedral
province con-

(β) *Provisions.*



national king, they were proud, and justly proud, of their national system of law. In the legal system of the Church, and especially in the appellate jurisdiction of the pope, they found the only exception to the triumph of the spirit of nationality. All the more readily, therefore, did they embrace the opportunity, when it was offered them in the sixteenth century, of renouncing once and for ever this "foreign jurisdiction." The constitutional importance of the appellate jurisdiction of the papacy lies in the fact that it did much to pave the way for the closer union of the civil and ecclesiastical judicatures, which has obtained from the Reformation up to the present time, and which is based upon a theory of a royal supremacy not very different to that expressed by Henry II. in the Constitutions of Clarendon.

(5) *Legatine jurisdiction.*

Just as the popes used their position of referees in the case of disputed elections to bishoprics to gain the power for themselves of nominating bishops; so they used the acknowledgment of their authority as final judges of appeal in ecclesiastical causes in order to acquire the right of direct interference with ordinary ecclesiastical administration by means of legatine commissions. There were two kinds of legates known to the Roman system. *Legati*

a latere were special commissioners sent by the pope for a particular purpose, whose authority accordingly ceased when the purpose was accomplished. Of this nature were the legations of John of Crema in the reign of Henry I., and of Otho and Othobon in the thirteenth century. Ordinary legates[1] were resident representatives of the pope in England, whose authority varied from time to time, just in proportion as the nation was inclined to admit or repudiate the claims of the papal supremacy. The very appointment of a resident representative who was *ex hypothesi* to exercise some authority, however vague, over the national Church, was an assertion of a superiority which was not likely to pass unheeded either by the clergy or the king. William I., Anselm, and Henry I. all refused to acknowledge that any such power lay in the pope. It was only either during troubled times like those of Stephen, or when king and primate were at variance as during the quarrel of Henry II. and Becket, that the popes were able successfully to maintain legates of

[1] These legates are sometimes inaccurately called *Legati nati.* The *Legatus natus* was an *ex-officio* legate, a man who exercised what were considered legatine functions by virtue merely of his office, without necessarily having a legatine commission. The archbishops always had commissions.

... now in matters ... their position, as ... dom, to acquire ... ppointments in ... ystem of tactics ... iction. Before ... ng, there were ... der the earlier ... paratively com- ... the king was ... al was lodged, ... to Rome was ... e to an arbiter ... court. Never- ... aling to Rome ... of an arbitration ... of Henry II. it ... acknowledged ... final court of ... This was the ... to abolish by ... and there was ... actively can- ... ket than that ... the archbishop, ... te of the king, ... al in ecclesias- ... cordingly taken

that the abrogation of this provision, after the death of Becket, should be full and unmistakable. From that time to the passing of the Statutes of Præmunire in 1393, the stream of appeals to Rome flowed free and unchecked, except by the fact that after the legal reforms of Edward I., if justice and not delay was the object of the suitor, he could obtain his object much more satisfactorily in England than at Rome. Even the trenchant provisions of the Statutes of Præmunire did not wholly put an end to the practice. There were still some cases for which the English law was inadequate to deal. There were often occasions in which it suited the king to play into the hands of the pope. Up to the very beginning of the Reformation, the papal authority on questions of marriage was unchallenged. Enough of the appellate jurisdiction was left to make men feel that, in the matter of ecclesiastical jurisdiction, recourse was still necessary to a foreign tribunal and a foreign system of law; and although the influence of that system and the power of that tribunal had been considerably curtailed by the national policy, still enough remained to show that the Church had to a great extent ceased to be national. Englishmen were proud of their national constitution, they were proud of their

Their constitutional effects.

...d justly proud, ... In the legal ... especially in the ... they found the ... of the spirit of ..., therefore, did ... when it was ... century, of re- ... foreign jurisdic- ...ortance of the ... lies in the ... the way for ... and ecclesiastical ... from the Refor- ..., and which is ... supremacy not ... by Henry II. in ...

... their position of ... elections to ... for themselves ... they used the ... authority as final ... causes in order ... interference with ... by means ... were two kinds ... system. *Legati*

a latere were special commissioners sent by the pope for a particular purpose, whose authority accordingly ceased when the purpose was accomplished. Of this nature were the legations of John of Crema in the reign of Henry I., and of Otho and Othobon in the thirteenth century. Ordinary legates[1] were resident representatives of the pope in England, whose authority varied from time to time, just in proportion as the nation was inclined to admit or repudiate the claims of the papal supremacy. The very appointment of a resident representative who was *ex hypothesi* to exercise some authority, however vague, over the national Church, was an assertion of a superiority which was not likely to pass unheeded either by the clergy or the king. William I., Anselm, and Henry I. all refused to acknowledge that any such power lay in the pope. It was only either during troubled times like those of Stephen, or when king and primate were at variance as during the quarrel of Henry II. and Becket, that the popes were able successfully to maintain legates of

[1] These legates are sometimes inaccurately called *Legati nati.* The *Legatus natus* was an *ex-officio* legate, a man who exercised what were considered legatine functions by virtue merely of his office, without necessarily having a legatine commission. The archbishops always had commissions.

e other, as the
the moment
ue to the great
s against the
nate with their
affairs in their
ful to gauge
of the power
e popes, while
were still the
were yet so
tics, that they
go any lengths
to keep their
It is, therefore
exact constitu-
tion in dispute
e appointment
t of legates, as
ffected between
which the interests
e people were
tter of clerical
the exclusive
ly triumphed.
s to induce them
ment, Edward
lves in provin-

administration of ecclesiastical affairs in England by the bishops and archbishops of the national Church, there is no doubt that the appointment of the archbishops as legates of the apostolical see did much to create confusion in the minds of men. It might be made to appear that the authority which they exercised over the Church was delegated to them by the pope, and not inherent in their own office. They were looked upon as primarily the ministers and servants of a foreign power. The system they represented was felt more and more to be divorced from the national life. Even Wolsey, independent, strong-minded, bold as he was, anxiously sought the legatine authority, as the strongest weapon he could use with which to bring about the reformation of the Church which he desired and in part accomplished: so ingrained in the national mind had become the idea that the source of all ecclesiastical jurisdiction was to be found at Rome.

Relations of the Church to the king. — We have seen how strongly in the Middle Ages was held the belief in the spiritual supremacy of the pope; and how, under the double incentive of hierarchical theory and political necessity, the popes had asserted that supremacy

R to

...ngland, as time ... and less and ... an *imperium in* ...crescence in the ...rong as a part ...of Europe, but ...onal life. The ... the spiritual ...of the temporal ... England this ... by clergy and ... adjustment of ... principles, so ... propositions, so ... fact, that the ... State centre. ... ciple of cosmo- ...tionality. The ... foreign aggres- ... stupid insular ... rivalry of the ...nt and sympa- ...d in the union ... own personal and ... greatest danger ... the king during ... advocate of the ...metimes against

the clergy themselves, but an advocate who never failed to exact a handsome fee for his services. Nor was this to be wondered at. The friars, who had done so much to renovate the Church in the thirteenth century, and were always the humble henchmen of the papacy, were now at the zenith of their fame, and some of the thirteenth-century primates were taken from their ranks. The papacy was filled at the beginning of the century by the most ambitious and most self-assertive of popes, Boniface VIII. During the long reign of Henry III. England had earned at Rome the expressive title of the milch cow of the papacy. It was to be expected, therefore, that the papal claims would be fully maintained by Boniface and the higher clergy, and that the duty of preserving the rights of the Church and people against their own natural leaders would fall upon the king. But, on the other hand, it was equally certain that if the king interfered on behalf of the Church against the pope, no barren victory in the mere interests of justice would content him. He would use the prestige thus gained to establish the authority of the Crown so firmly upon the clergy as seriously to interfere with their independence. The Church found herself, therefore, between two fires, and took

shelter with the one party or the other, as the more immediate necessities of the moment seemed to suggest. The kings, true to the great principle of defending themselves against the admission of an authority co-ordinate with their own into the administration of affairs in their kingdom, were never over-careful to gauge too conscientiously the character of the power which they were demanding. The popes, while they never forgot that they were still the spiritual heads of Christendom, were yet so mixed up in the turmoil of politics, that they found themselves compelled to go any lengths and make any sacrifices in order to keep their revenues and their patronage. It is, therefore by no means easy to trace the exact constitutional importance of each question in dispute as it arose. In the matter of the appointment of bishops and the appointment of legates, as we have seen, a compromise was effected between the king and the pope, by which the interests both of the Church and of the people were cynically sacrificed. In the matter of clerical representation, on the contrary, the exclusive spirit of the clergy completely triumphed. After a few useless attempts to induce them to take their places in Parliament, Edward III. allowed them to tax themselves in provin-

(1) *Clerical representation.*

cial synod. The Convocations met when summoned by the archbishops, and their meetings did not necessarily correspond with the meetings of Parliament. They transacted business of all sorts connected with the Church besides the money grants, without let or hindrance; and although certainly from the beginning of the fifteenth century it seems to have been an established custom that the clerical grant should bear a certain fixed proportion to the Parliamentary grant, no compulsion on the matter on the part of the king was ever exercised, perhaps because the necessity for such interference never arose.

(2) *Anti-clerical legislation.*

With regard to many of the privileges of the spiritualty it was far otherwise. Throughout the fourteenth century the kings found it necessary to call to their aid the assistance of their Parliaments to check the growth of clerical pretensions, both on the part of the pope and of the national clergy. In the reign of Edward I., two important acts were passed to keep the spiritual estate in due subordination, *i.e.* (1) the act *de Religiosis*, passed in 1279, which, by rendering the consent of the king necessary for the acquisition of land in mortmain by religious houses, both checked their growth in wealth, which was becoming a serious political danger,

(a) *De Religiosis*

ces of the land
t *Circumspecte*
ability assigned
a stop to the
ical courts by
hold pleas on
he succeeding
pe were more
ergy. Petition
other in quick
the fourteenth
Provisors, but
t, wearied with
its own hands,
famous Statute
with additional
ntly re-enacted
act the rights
forfeiture and
nishments upon
otion by papal
, although the
ent to the act,
d as a perfectly
the legislation
and although
ice, was never-
as embodying

the law on the subject. As the Statute of Provisors dealt with patronage, so the Statute of Præmunire dealt with administration. In 1353 an ordinance was passed inflicting the penalty of outlawry upon all who refused to answer for prosecuting abroad suits cognizable in the English courts. This ordinance was embodied in a statute in the year 1365, and the statute was amplified and re-enacted in a final form in 1393, in spite of the protest of the lords spiritual. By this act any one who procured from the court of Rome any bull or process which touched the king's crown or dignity, was to suffer the penalties of a præmunire, *i.e.* outlawry. Thus the kings obtained a weapon of the strongest possible character, to use against the pope if necessary. How greatly it was dreaded is shown from the feverish anxiety evinced by the popes to get it repealed, if possible, but that any immediate use was made of it seems to be improbable. In the next century, of course, it formed the pretext by which Henry VIII. laid the clergy at his feet. In these two statutes Parliament asserted and maintained, on behalf of the Church and realm of England, an independence of action with regard to the pope and the clergy which forms a link between the policy of the Constitutions

(8) *Præmunire.*

tury, and that
es of the six-
spiritual, from
ar, refused their
that these pro-
ge and security
well as to the

Church found
danger, that of
w enemy, that
f Wycliffe, as
rs the Lollards,
system of the
tem of the State.
wn position en-
personal grace is
authority, Henry
akened and his
rd attacks upon
iance with the
The common
to combine in
ressive measures
s the great blot
ment and the
directed against
The first, passed

under Richard II., was aimed against Wycliffe's poor priests, and authorized the imprisonment by the sheriffs of preachers certified by the bishops to be teachers of heresy. The second, passed under Henry IV. in 1401, is the famous statute *de heretico comburendo*, and provided that teachers and maintainers of heresy should be liable to be imprisoned by the bishops until abjuration, and on refusal to abjure, or on relapse after abjuration, should be handed over to the sheriffs to be burned. The third, the statute against Lollardy of 1414, passed by Henry V. after Oldcastle's attempt at revolution had failed, authorized the justices to inquire after heretics, and to deliver them to the spiritual court for trial. Upon conviction they would, under the act of 1401, be re-delivered to the king's officers for punishment. By this act, therefore, heresy was made an offence against the common law as well as against the canon law, punishable in the case of the obstinate and the relapsed by death. It was put in force with some severity during the few years following Oldcastle's rising, but the vast majority of prosecutions ended in penance and recantation, and it does not appear that more than sixty persons in all suffered the extreme penalty. In estimating the importance of this legislation, we may at once dismiss from

our minds the idea that there was anything peculiarly horrible to the ideas of that age in the punishment awarded. Death by burning was a form of punishment, well known to the English common law as well as to that of most countries in the Middle Ages, for some crimes of more than ordinary magnitude; and it existed unrepealed in our law-books almost to the present century.[1] Horrible as it appears to us with our finer instincts, it was not so considered in that cruel time, and even from the point of view of simple humanity it may perhaps be thought to compare not unfavourably with the lingering torture of death by the rack and the weight, dealt out to political prisoners in the more enlightened age of Elizabeth and James.

Constitutional results.

But while acquitting the Lancastrian dynasty from the charge of special bloodthirstiness, and admitting to the full that the danger to the peace and good order of society from the Lollards was great enough to warrant exceptional measures—a proposition which is abundantly proved by the contents of the Lollard confiscatory proposals in the Parliament of 1410

[1] The punishment of death by burning, for high and petty treason committed by a woman, which included the murder of a husband by a wife, was not abrogated till 1790 by the Act 30 Geo. III. c. 48. See Stephen's "History of the Criminal Law," vol. i. p. 447.

—we cannot but pronounce the legislation itself to have been of serious detriment to the well-being of the constitution. In these acts the Crown had for the first time called in the assistance of the spiritual arm to aid the secular government in the performance of its own proper duties. Procedure which existed for the benefit of the soul was used to secure the safety of the State. Opinions held and words spoken became criminal matters, cognizable by tribunals which were looking quite as much to the security of the government against the traitor, as to the security of the Church against the heretic. Thus the precedent was formed and the foundation laid for that long series of acts, ecclesiastical in form but civil in intention, which, from the verbal Treasons Act of Henry VIII.[1] to the "Act for preventing the Growth of Popery" of William III.,[2] have been the disgrace of the statute-book, and among the worst engines of kingly and parliamentary tyranny.

Relations to the nation.

The Relations of the Church to the People.— The relations of the Church to the nation, though the most important of all in her own internal history, are the least important from the point of view of constitutional development, for in that particular their influence must neces-

[1] 26 Hen. VIII. c. 13. [2] 11 and 12 Will. III. c. 4.

[illegible] the indirect in-
[illegible] filled so large a
[illegible] seen in the period
[illegible] to mould the
[illegible] of the Middle
[illegible] large enough to
[illegible] relations to the
[illegible]

[illegible] church was seen
[illegible] ken from every
[illegible] ns of the king
[illegible] poorest of the
[illegible] its struggle for
[illegible] the love of art,
[illegible] of science and
[illegible] that followed, a
[illegible] and the people
[illegible] rgy became ex-
[illegible] nally numerous,
[illegible] ly vested in the
[illegible] of the bishoprics,
[illegible] ained poor. As
[illegible] s for the saying
[illegible] departed became
[illegible] ong French wars
[illegible] number of priests
[illegible] for a miserable
[illegible] life, without re-

sponsibility for the welfare of any human being, without any duties or employment except the technical one of their daily Mass. Under these circumstances it was not to be wondered at that they became a loss to the nation and a scandal to the Church, and helped to lower instead of raise the standard of morality in the community. It was possible, as the history of Archbishop Chichele shows, for men of humble origin to rise to the highest places of position in the Church. The requirement of learning in every candidate for ordination was rigorously insisted upon; but as time went on that learning became shared by the laity in daily increasing numbers, and the avenues for promotion daily became more and more closed to men of humble origin, by the closer connection between the clergy and the great families. In the fifteenth century England was the prey of the great families. The Mortimers, the Poles, the Percies, the Courtenays, the Beauchamps, the Beauforts, the Neviles, absorb every office in Church and State. The Lancastrian kings, forced to ally themselves with the influential clergy, did not dare, and the Yorkists did not care, to interfere. The cause of the Church becomes identified in men's minds with the cause of the nobles. Lollardy is at once seized upon by the more democratic of the

Character of the priesthood for learning and position.

The Church becomes allied with the nobility.

people, because they see in it a weapon which can be used against an aristocratic Church. Even the lavish gifts that seem to redeem the falseness of the century, and endow it with such exquisite beauties of art, are prompted more often by the sentiments of aristocratic patronage than by the nobler spirit of self-sacrifice. The fact is, that just as the Church became more and more organized as a separate institution in the country, affecting the national life, instead of herself being the expression of the highest part of the national life, so she ceased to be wholly representative of the people. When the clergy became a fully developed estate of the realm, owning a large part of the wealth of the country, paying a large proportion of the taxes of the country, absorbing a large number of the offices of government, possessing a majority of the House of Lords, having a separate legislature of their own, paying an allegiance, however limited, to a foreign power, jealously guarding from outside interference a system of judicature of their own which they were at once incapable of reforming, and unwilling to permit to be reformed, the Church acquired interests of her own to defend which were antagonistic to the interests of the country, she had privileges to maintain which were dearer to her than her responsibilities. She exercised her great

Divorce between the Church and the nation.

influence in politics and on the nation primarily for her own selfish advantage, and only secondarily for the people, whose trustee she was. Accordingly, when the crash came, and the reformation she had refused to undertake for herself was forced on her from without, she received a fitting reward for the past by the loss for ever of her undisputed rule over the inner life of all Englishmen, and by the fatal gain of an influence, perhaps greater than before, over the politics of the nation.

Theories of Church and State.

To try and construct ideal theories of the due relations between Church and State is a task as unprofitable as it is interesting, for if the verdict of history is to be accepted, such relations never have existed since the Church emerged from the catacombs, and will never exist if the experience of the past is at all an earnest of the course of the future. Certainly the problem does not get less complicated as time goes on. The aim of the statesman has been rather to maintain such a balance between the two forces as should avoid injustice to either, and leave each independent enough to be able to develop freely its best energies in its own sphere. The difficulty is exactly analogous to that experienced by politicians in every limited monarchy, namely, how best to apportion power between the king and

Difficulty of the problem.

the people. It is easy, of course, to reduce the sovereign to a mere ornamental figure-head shorn of all independent political power. It is equally easy to endow him with such an extent of personal authority as to enable him, if he chooses, to impose his will upon his people. The difficulty of finding a middle course, and constructing such a union between the two as should prevent harmful rivalry, and enable each force to bring its own powers to bear upon the healthy growth of the constitution, took England alone two revolutions and four centuries of internal struggle to solve, and it cannot be said that the solution, when found, wholly satisfied the conditions or entirely commended itself to a patriotic mind.

Policy adopted by kings.

In the Middle Ages, the theorizing on the subject of Church and State chiefly sprung from the assertion of the superiority of the spiritual power over the civil by Hildebrand and his successors. Gregory VII. himself found it necessary to lay an intellectual foundation for his hierarchical assumptions, and to defend them by reasoning in the quarrel with the emperor which inevitably followed. Kings and statesmen were content merely with guarding themselves against the results of such theories, when they took the form of definite encroach-

ments on the civil power. Acts such as *Circumspecte Agatis*, and the Statute of Præmunire, did not affect to proceed upon any theory of Church and State—such, for instance, as that of the nationality of the Church in England, which was laid down afterwards by Henry VIII., in the preamble to the Statute in Restraint of Appeals of 1534—but ignoring, not controverting, the papal position, merely laid down certain rules, by which certain particular privileges of the clergy were curtailed. It is true that the hierarchical theories of Hildebrand received, in the twelfth and thirteenth centuries, a further development at the hands of writers like John of Salisbury and Thomas Aquinas, and became formulated as the orthodox doctrine on the subject in the schools. The friars, especially the Dominicans, ardently embraced them, and furthered them by every means in their power, both by thought and action. It is significant that in England the greatest difficulties between Church and State arose when the primates were friars. It is equally true that in the fourteenth century, when the papacy had become to a great extent discredited, there grew up at the University of Paris a school which denied the authority of the pope in temporal matters altogether.

Rival theories in the Church.

(1) *Thomas Aquinas.*

Marsiglio of Padua and William Ockham, the

(2) *Marsigilio of Padua.*

foremost representatives of this school, were prepared to maintain, in the broadest possible way, the incapacity of the clergy to interfere at all outside the purely spiritual sphere. They even apparently went so far as to base ecclesiastical authority on the consent of the Church rather than on the transmission of Divine power. These theories, with the exception of the indirect influence they exercised on the mind of Wycliffe, never bore practical fruit. It was not the victory of any rival theory that dispelled the illusion of the mediæval papacy in the minds of men, but its own degeneracy. The greater the hierarchical assumption, the worse did the miserable reality appear. Men could no longer give a blind adherence to an institution which, claiming to be divine, had resulted in the Great Schism, and produced the popes of the fifteenth century. In England, where the battle between the civil and spiritual powers was less pronounced, the necessity for a theory was less recognized. Until the time of Wycliffe, there is no one whose theories become in any sense powerful factors in determining the relations between Church and State. Until then, such opinions had remained in the academical circles of the schools, and had never been applied to the hard facts of politics. Even Wycliffe's theories

(3) *Wycliffe.*

on government were too scholastic in form and visionary in substance to have much influence on the constitution. As an enthusiastic single-hearted enemy of abuses, whether in individuals or in institutions, he won his way into the hearts of his fellow-countrymen. As the unfolder of a reasoned scheme of constructive reform, he never convinced their intellects. The relations between Church and State in England grew and varied from time to time, just as the relations between king and Parliament grew and varied, not in accordance with any fixed rule or accepted ideal, but simply in obedience with the particular need of the particular occasion. Even at the period of her greatest degeneracy as a national institution, in the fifteenth century, the Church never wholly lost her old prestige and position, as the leader of the English people and the moulder of their national life. Still in the theories of Wycliffe, as in the rapacity of the popes, in the selfishness of the kings, and in the worldliness of the clergy, is to be found one of the causes which helped to produce the religious rebellion of the next century, and to determine the peculiar course which it took in England. By the Reformation another attempt was made to settle the due relations of Church and State in Eng-

land—an attempt, perhaps, which, although appealing to principle and based on historical precedent, will hardly be considered by the historian to have produced results more finally satisfactory than those which we have been considering in the Church of the Middle Ages.

INDEX.

Abbots, 78, 168, 169, 171, 309
Administration, Norman and Angevin, 113–115, 124, 156–158, 291–293
Aids, the three legal, 84, 140
Alcred, deposition of, 22
Alcuin, 9
Alderman, 154, 195
Alfred, 15, 17–19, 21, 280
Alienation of Crown lands, 264, 265; restrictions on, 265, 266
Alod, 3, 25
Anjou, Margaret of, 263
Anselm, 69, 292, 321
Appeals to Rome, 297, 312, 318–320
Aquinas, Thomas, theory of Church and State, 339
Arundel, Archbishop, 228
Asser, 22
Assize of Arms, 95, 194, 218
——, Clarendon, 99
——, Mort d'ancestor, 64
——, the Great, 304
Athelstan, 20, 39, 129

Bæda, 7
Bailiff, 26, 72
Bankers, Italian, 218
Barnstable, 201
Barons, under Henry II., 121, 155
——, John, 156, 157, 161–164; become national, 168, 174–180, 183, 195; under the Lancastrians, 234-241, 249–256, 260, 263–264
Barons, under the Norman Kings, 92, 93, 131–133
Battle, trial by, 97
Beauchamp, Lord, 177
Beaufort, Cardinal, 245, 248, 249, 255, 262, 322
Becket, 122, 303, 307, 321
Bedford, 248, 262, 264
Beneficium, 13, 47
Beorn, 35
Bigod, 308
Birinus, 269
Bishops, 32, 33, 37, 78, 79, 108, 132, 169, 170, 172, 183, 309, 314, 315
Black Death, 256, 258
Bohun, 308
Boniface VIII., 300, 325
Book-land, 25–27, 61
Borh, 48
Bosco, Hugh de, 250
Bosworth, battle of, 250
Bot, 33
Breauté, Fawkes de, 144
Burgage, 75
Burgbryce, 33
Burgh, Hubert de, 121
Burgundy, 244
Butler, office of royal, 118

Cade, Jack, rebellion of, 245, 249
Calais, 265
Canon Law, influence of, 297, 304–305
Canterbury, Archbishop of, 10
Canute, 29, 30, 38, 103
Carta Mercatoria, 214
Carucage, 137, 138, 187
Castellatio, 101
Castles, 101
Cenwalh, 7
Ceorl, 3, 25
Chamberlain, office of, 118
Chancellor, office of, 119, 122, 123
Chancery, Court of, 232
Chantry Priests, character of, 334
Charles the Great, 91
Charles II., 248
Charters, the Select, 121, 173, 189, 190, 200
Chester, earldom of, 108
Chichele, Archbishop, 322, 335
Chivalry, tenure in, 62
Chronicle, Anglo-Saxon, 7, 21, 35,
Church, 4, 8, 9, 10, 28, 32, 111, 160, 172, 225, 226, 250, 252, 255, 257, 261; and State, relations between, before the Norman Conquest, 274–277; after the Norman Conquest, 290; under the Angevin kings, 296; under the later Plantagenets, 302, 310; theories of, 337–342; the national policy of, under Norman and Angevin kings, 289–298; aristocratic character of, under the Lancastrians, 226, 253, 335
Circumspecte Agatis, writ of, 328
Clarendon, assize of, 99
——, constitutions of, 78, 147, 295, 318, 320, 330
Clement V., 316
Clergy, 166, 168, 172, 173, 183, 234, 235, 251, 256, 258, 261
Coinage, right of, 102
Comitatus, 7, 12, 13, 23, 25, 47
Commendation, 14, 47
Commissions of Array, 144, 218
Commons, estate of, 115, 145, 168, 176, 180, *seq.*; 215–222, 224, 226, 227, 229, 232, 235, 236, 241–248, 252–254, 261–263
Communa, 154, 157; French, 196
Comnenus, John, 113
Confirmatio Cartarum, 162, 167, 212, 213, 215, 219, 300
Conrad II., 81
Constable, office of, 118
Convocation, 327
Coroner, 140, 149
Cornwall, Earl of, 183
Council, the Great, 115–117, 127, 128, 148, 169, 174, 182, 187, 212; the Royal, 159–162, 203, 222, 231; the Privy, 124, 233–240; under the Tudors, 240, 251; of Oxford, 147, 148; Ecclesiastical, 170–173; Lateran, 307
Court Baron, 67, 70, 146
Court Customary, 71, 145
Court of Common Pleas, 127
Court of King's Bench, 126
Court Leet, 71, 145
Crusades, effects of, 185
Curia Regis, 80–84, 89, 117–119, 123–127
Customs, 213–217
Cynewulf, 22

Danegeld, 137, 138, 307
Danelaw, 12, 42

Danes, 11, 14, 17, 21, 23, 36, 42, 72, 130; effort of invasions of, upon the Church, 279–281
David of Wales, 202
Despencers, the, 178
Dialogus de Scaccario, 134
Domesday Book, 41, 42, 132; survey, 50, 51, 54, 101
Dunstan, 38, 280, 282, 286, 287
Durham, bishopric of, 104, 108

Ealdorman, 32–38, 73, 103, 107, 130–132, 283
Earl, 29, 30, 32, 36, 37, 177, 240
Earldom, 103–108, 177, 240
Earls, conspiracy of, 105
Early English Church, organization of, 272, *seq.*
East Anglia, 41
Edgar, 20, 22, 39, 80, 282
Edmund, 14, 15, 21
Edred, 21
Edward the Confessor, 29, 30, 54, 71, 73, 103, 283
Edward the Elder, 17
Edward I., 86, 115, 162, 167, 172, 176, 191, 192, 194, 202, 211, 212, 221, 225, 232, 252, 302, 309, 327
Edward II., 216, 218–220, 251, 252
Edward III., 178, 198, 208, 210, 215, 217, 218, 221, 224, 225, 232, 242, 251, 252, 255, 326
Edward IV., 226, 250
Edwy, 22
Egbert, 279
Elections, 145, 187, 190, 191, 205; attempts to influence, 242, 243, 245, 246, 252, 254, 255; legislation on, 243, 245, 254; of kings, 77, 117
Eorl, 3, 4, 25
Escheats, 62, 141
Essarts, 142
Établissements of S. Louis, 89
Ethelbald, 22
Ethelbert, 19
Ethelred II., 15, 18, 20, 22, 80, 103
Ethelwulf, 22
Exchequer, 80, 84, 86, 120, 123–126, 140, 142; barons of, 119, 123

Feudalism, 1, 2, 24–30, 40–44; checks upon, 120, 121, 132, 133, 140, 145, 147, 148, 155–157, 159, 160, 182, 197, 294, 295
Fines, collection of, 138–140.
Firma burgi, 135, 136, 151, 155
Fitz Peter, Geoffrey, 121
Florence of Worcester, 90
Folkland, 5, 15, 18, 28, 42, 74, 75
Folkmoot. *See* Witenagemot.
Forest law, 142
Forfeiture, 62
France, wars with, 254, 259
Frankpledge, 97; view of, 146
Friars, the, 164, 339
Frith, 16
Fyrd, 15, 26, 27, 51, 91–93, 107, 143

Gascony, expeditions to, 183
Geoffrey, Archbishop of York, 307
George III., 226
Germania of Tacitus, 3, 6, 41
Gesith, 48, 63
Glanvil, 120, 121
Godwine, 130
Gratian, 297, 305
Grith, 16, 17

Grossteste, Robert, 308
Guader, Ralph, 104, 105
Guienne, possession of, by the English, 260
Guilds, 153, 154, 195, 256

Harold, 21, 283
Haute Justice, 99
Henry I., 66, 77, 82, 83, 97, 98, 112, 113, 117, 120, 152, 160, 189, 321
Henry I., of France, 30
Henry II., 57, 77, 85, 95, 100, 102, 110, 112, 114, 120, 141, 142, 160, 161, 174, 210, 232, 318, 321
Henry III., 99, 101, 102, 106, 114, 115, 122, 183, 232, 252, 325
Henry IV., 225, 229, 230, 234, 242, 243, 253, 259, 261, 262, 263, 264, 265, 267, 328, 330
Henry V., 227, 236, 243, 259, 262, 265, 268, 315, 328
Henry VI., 177, 221, 227, 230, 237, 244, 247, 249, 252, 255, 256, 259, 262, 263, 266, 267, 268, 313, 317
Henry VII., 247, 250, 256
Henry VIII., 278, 317, 329, 339
Henry of Huntingdon, 35
Henry of Winchester, 102
Heptarchy, the, 10
Heresy, legislation against, 330, 331
Heriot, 63
Hildebrand, 287, 338, 339
Honour, 71, 72, 98
Hundred, 5, 31, 32, 72, 97, 146, 190, 196

Immunity, 47
Impeachment, 245, 248
Ini, 33
Iter of 1194, 147
Itinerant Justices, 126, 149, 150
Ivo of Chartres, 297, 305
Ivo of Grantmesnil, 100

James I., 248
Jews, 218
John, 115, 141, 155, 156, 160, 161, 315
Joinville, 89
Judicial organization, 24, 25, 27, 28, 125 *seq.*
Juries, 149, 150, 187
Jurisdiction, 47, 95
Justices of the Peace, 187
Justiciar, 119, 123

King, 7–23; election of, 77; deposition of, 21, 22; demesne of, 18, 42; power of, in Angevin times, 115, 121, 127, 128, 132, 150, 155; position of, in Lancastrian times, 252, 263, 264–267; position with regard to the Church, in Norman times, 289–296; in Plantagenet times, 296–304; 324–330; in Lancastrian times, 322, 330–332
Knight's fee, 57, 59, 142, 174
Knights of the shire, 164, 166, 181–193, 198, 199, 205, 245, 264

Lancaster, Henry of, 225, 228
Lancaster, Thomas of, 234
Lancastrian kings, 179; principles of, 228, 234, 261; scheme of government of, 230–239, 254; failure of scheme of, 248–268
Land, allotment of, 4
Landrica, 29, 72

Lanfranc, 276, 286–289, 291
Langton, Stephen, 171, 298, 308, 322
Lawyers, 198, 199, 205; influence of, on the Church, 292, 293
Legal system, influence of the Church upon, 304, 305
Legates, 320–323
Lewes, battle of, 166
Liberties, 72
Lincoln, Hugh of, 307
Lincolnshire, 41
Lionel of Antwerp, 217
Lœt, 3, 4, 25, 33, 35
Lollards, 225, 234, 235, 330–332, 335
London, 152, 196
Lords, House of, 176, 177–180, 231, 236, 240, 241, 309, 336
Lords-lieutenant, 144
Louis, S. (ix.), 89
Lucy, De, 120

Magna Carta, 65, 78, 85, 115, 127, 141, 150, 157, 158, 162, 163, 164, 168, 172, 174, 175, 179, 181, 182, 187, 203, 211, 212, 296, 298, 304
Manors, 25, 52, 53, 67, 68, 71, 98, 99, 145, 146, 258
Marriage, 65
Marshal, office of, 118
Marsiglio of Padua, theory of Church and State, 339
Martin V., 316, 322
Mary, Queen, 144
Matilda, Empress, 77
Mayor, office of, 154, 156, 195
Merchants, 198, 212-216
Mercia, 104
Milan, edict of, 81
Military organization, 24, 26, 252
Monasteries, influence of, before the Norman Conquest, 278
Montfort, Simon de, 166, 167, 176, 192, 194, 201, 300
Mortimer, 178

Norman Conquest, 44, 45, 48, 54, 58, 60, 68, 69, 72, 75–77, 80, 81, 108, 109, 131, 169, 181, 284–293
Normandy, loss of, 161, 162; retention of, by Henry VI., 260; final loss of, 260
Northumbria, 104

Ockham, William, 339
Odo of Bayeux, 93, 108
Oferhynes, 18
Oldcastle, Sir John, 331
Ordinance, 219
Oswy, 270

Palatine earldoms, 108, 132
Parliament, the Model, 167, 193, 200, 210, 309; of 1301, 221; of Lincoln, 221; the Good, 222, 224; representation of the clergy in, 172, 173, 301, 326; opposition of, to the royal prerogative, 225, 227, 310; under Edward III. and Richard II., 232–234, 266; under the Lancastrian kings, 228–231
Patent, 174, 177, 240
Peers, tenure of, 174–180, 240
Petition, right of, 220–222
Pleas of the Crown, 139, 140
Pope, relations of the Church to, 288, 289, 311 *seq.*
Præmunientes clause, 173

Præmunire, statute of, 329
Prerogative, the royal, 224, 227, 233
Prisage, 213, 214
Privileges of Parliament, 245–248
Provisions of Oxford, 300
Provisions, Papal, 315
Provisors, statute of, 328

Ranulf Flambard, 65, 66, 92, 120, 282, 294
Rebellion of 1173–4, 121, 155
Reliefs, 63, 141
Remigius, 306
Representation, influence of the Church upon, 301–304
Resumption, acts of, 265, 267
Retainers, 252, 260
Revolution of 1399, 225, 226, 230, 234, 261
Rich, Edmund, 308
Richard I., 138, 153, 166
Richard II., 224, 225, 228, 230, 231, 233, 234, 242, 246, 255, 261, 263, 264, 313
Richard III., 247, 250
Robert of Belesme, 93, 94, 108
Robert of Gloucester, 102
Robert of Normandy, 92, 94
Roger of Breteuil, 104, 105
Roger of Montgomery, 104
Roses, Wars of, 227, 241, 246, 250, 255, 256, 263

Sac and soc, 28, 71, 145
S. Albans, 201; battle of, 246, 250
Saladin tithe, 148
Salisbury, assembly of, 90, 91, 191
Salisbury, Roger of, 120, 292, 303
Scutage, 57, 142
Segrave, Stephen de, 121
Sheriff, 32, 37–39, 97–99, 107, 108, 134–144, 146, 183, 191–196, 202, 204–206, 243
Shire, 31, 34, 37–40, 80, 96, 107, 108, 128–134, 140, 144, 147–150, 188–193
Shrewsbury, earldom of, 108
Sigebert, deposition of, 22
Sigismund, Emperor, 244
Slavery, action of the Church with regard to, 306
Socage, 62
Somerset, 239
Standard, battle of the, 144
Statutes, 219, 228; of Marlborough, 97; of Merton, 99; de religiosis, 327; quia emptores, 185, 219; of Winchester, 218; of Staples, 215, 216; of Præmunire, 329; of Provisors, 316, 328; of 1430, 245, 247, 263; of 1446, 245, 263; of Labourers, 257; against heresy, 330, 331; in Restraint of Appeals, 339
Stephen, 77, 99, 100–102, 114, 117, 120, 266, 321
Steward, office of, 118
Stigand, 283, 288
Stratford, Archbishop, 179
Suffolk, 244, 245, 262

Tallage, 85, 212, 213
Tallies, accounts of Exchequer Court kept by, 143
Taxation, 57, 84–86, 114, 134–138, 148, 210–219, 310; of clergy by king, 307–308, 326, 327; of clergy by pope, 312, 313
Thegnhood, 47, 48, 53, 73, 80, 81
Theningmannagemot, 80

Theodore, Archbishop, 269–272
Theow, 4, 69
Thorpe, Speaker, 246
Three-field system, 4
Tithe, 277
Tithing, in Frankpledge, 47
Tourn and leet, 97, 205
Towns, 74, 86, 150–155; representation of, 193–202
Township, 4, 5
Treason, 15, 16, 119, 123
Treasurer, office of royal, 119, 123
Trial by combat, 149
—— ordeal, 149
Truce of God, 111
Tudors, the, 226, 227, 229, 240, 263
Tunnage and Poundage, 267
Tyler, Wat, rebellion of, 257

Villeinage, 257, 258
Villeins, 67, 70, 225, 257, 258

Wales, war with, 254
Wallingford, treaty of, 101, 102, 108
Walter, Hubert, 298, 303
Wardship, 141
Wedmore, treaty of, 11
Wessex, 10, 11, 31, 42, 104
Whitby, synod of, 270
Wilfrid, 269
William I., 41, 48, 50, 55, 56, 66, 69, 74, 79, 80, 88, 90, 91, 96, 103, 104–107, 109, 131–133, 182, 276, 284–290, 321
William II., 66, 77, 93, 94, 291, 294
William III., 226
Williams, John, Bishop of Lincoln, 123
Winchelsey, Archbishop, 308, 309
Winchester, charter of, 153
Winchester, Henry of, 522
Witenagemot, 6, 15, 18, 19, 20–22, 31, 32, 34, 36, 37, 39, 76–79, 90, 116, 145, 159, 168, 202
Wolsey, 323
Wool-growing, 257, 258
Writs, 98, 190, 191, 200, 203–205
Wulfstan, 69, 306
Wycliffe, 317, 330, 331, 340–341

York, Richard, Duke of, 239, 245, 246
Young, Thomas, 246

PRINTED BY WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

UNIV. OF MICH.
AUG 8 1908